

20227

IN THE CIRCUIT COURT OF  
THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION  
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,  
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO

COMPANY, et al.,

Defendants.

\_\_\_\_\_  
Miami-Dade County Courthouse  
Miami, Florida  
Wednesday, 1:45 p.m.  
January 20, 1999

TRIAL - VOLUME 183

The above-styled cause came on for trial  
before the Honorable Robert Paul Kaye, Circuit

Judge,

pursuant to notice.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20228

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

CLIFFORD DOUGLAS, ESQ.

On behalf of Plaintiffs

DECHERT PRICE & RHOADS

ROBERT C. HEIM, ESQ.

SEAN P. WAJERT, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER

R. BENJAMINE REID, ESQ.

DOUGLAS CHUMBLEY, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

RICHARD M. KIRBY, ESQ.

DIANE PULLEY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

MICHAEL RUSS, ESQ.

RICHARD A. SCHNEIDER, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

SHOOK HARDY & BACON

EDWARD A. MOSS, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.  
On behalf of Defendant Lorillard  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20229

APPEARANCES (Continued)  
DEBEVOISE & PLIMPTON  
ANNE COHEN, ESQ.  
JOSEPH R. MOODHE, ESQ.  
On behalf of Defendant The Council for Tobacco Research  
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL  
DAVID L. ROSS, ESQ.  
On behalf of Defendant Lorillard  
MARTINEZ & GUTIERREZ  
JOSE MARTINEZ, ESQ.  
On behalf of Defendant Dosal Tobacco Corp.  
and Tobacco Institute  
KASOWITZ BENSON TORRES & FRIEDMAN  
AARON MARKS, ESQ.  
NANCY STRAUB, ESQ.  
On behalf of Defendants Liggett Group  
and Brooke Group  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20230

1	I N D E X			
2	WITNESS			PAGE
3	Deposition of Ellen Merlo (Continued) ...			20240
	Deposition of Martin Orlowsky .....			20281
4				
5				
6	E X H I B I T S			
7	PLAINTIFFS'	OFFERED	ADMITTED	FOR ID
	EXHIBITS	PAGE	PAGE	PAGE
8				
	None			
9				
10				
	E X H I B I T S			
11	DEFENDANTS'	OFFERED	ADMITTED	FOR ID
12	EXHIBITS	PAGE	PAGE	PAGE
13	None			
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20231

1 (Whereupon, the following proceedings were  
had:)

2 THE COURT: Are we all set?  
3 MR. ROSENBLATT: No. I'm waiting on my  
4 marked-up transcript on Ellen Merlo, the changes  
that  
5 we made. Apparently it's coming from my office  
within  
6 the next couple of minutes. So I'll know.  
7 Mr. Douglas wants to take up something,  
8 mention something to Your Honor for direction,  
having  
9 to do, in a way, with President Clinton's talk  
last  
10 night.  
11 THE COURT: Yes, sir.  
12 MR. DOUGLAS: Good afternoon, Your  
Honor.  
13 The issue that's arisen involves the fact that I  
14 prepared some time ago a lengthy analysis  
concerning  
15 the potential for the Justice Department filing  
the  
16 type of lawsuit that last night the President  
announced  
17 they would be filing against some tobacco  
companies.  
18 This analysis is with a United States  
19 Senator, who today, I'm told, is sending it over  
to  
20 Attorney General Reno. And as a result of that,  
21 because he's also issuing it with a press release,  
I've  
22 begun to receive calls from some members of the  
press  
23 asking about the legal basis for the Federal  
24 Government's filing this type of lawsuit.  
25 Again, this lawsuit that they're filing  
has

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20232  
1 no relationship, of course, to this action. This  
is  
2 something that I've done for about 10 years  
full-time.  
3 Actually, my job is doing that type of work, and  
then  
4 when appropriate, dealing with members of the  
press to  
5 provide information and analysis.  
6 So the issue that's arisen, that I  
wanted to  
7 bring to your attention, concerns the fact that  
I'm  
8 going to be getting these calls, and since it has  
no  
9 bearing on this case and because I will be  
presenting  
10 myself in my private, individual capacity and not  
as an  
11 attorney involved in Engle, I wanted to bring this  
to  
12 your attention, Your Honor, and ask your guidance

13 before I give any responses.  
14 THE COURT: Okay. You did this work  
under  
15 the auspices of who?  
16 MR. DOUGLAS: It was commissioned by an  
17 organization a few months ago. I've done it in my  
18 independent capacity.  
19 THE COURT: You made an analysis of  
these  
20 kinds of cases?  
21 MR. DOUGLAS: Of the legal issues, the  
22 statutory basis upon which the Federal Government  
could  
23 bring a lawsuit of this nature. And, of course,  
it  
24 deals not with this type of case.  
25 THE COURT: I understand, because we  
have  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20233  
1 some sort of a gag order here, that's where the  
problem  
2 comes in.  
3 MR. HEIM: My concern, Your Honor, is  
that  
4 Mr. Douglas has appeared in this case as counsel  
of  
5 record with Mr. Rosenblatt. The jury has seen  
6 Mr. Douglas in the courtroom. They've heard from  
7 Mr. Douglas.  
8 I would be concerned about any  
commentary in  
9 the press by Mr. Douglas on any tobacco-related  
matter  
10 while he's acting as co-counsel in this case.  
Since we  
11 are counsel in this case, all of us have been  
12 instructed to refrain from commenting.  
13 And while I understand fully that what  
he's  
14 saying is that he wouldn't be commenting about  
this  
15 case, it's much like me getting called when the  
Third  
16 Circuit affirmed the Barnes case that I argued on  
17 appeal in the Third Circuit, which is a class  
action of  
18 tobacco smokers. It seemed to me that I shouldn't  
be  
19 commenting in the press while I'm subject to Your  
20 Honor's order about counsel not commenting.  
21 THE COURT: Well, I was mainly concerned  
when  
22 commenting with the issues that may affect this  
case.  
23 I mean, I can't keep everybody gagged up for  
24 everything. The basic issue was to keep everybody  
from  
25 speaking with the media regarding some of the  
issues or

TAYLOR, JONOVIC, WHITE & GENDRON

20234

1 any of the issues in this case that might affect  
the 2 jury.

3 I can't really keep a lawyer from  
practicing 4 his trade, which is another problem. This is a  
5 separate matter and a private matter which deals  
with 6 some issues that really don't affect us here,  
other 7 than the fact that there's a lawsuit against  
tobacco, 8 or potential. I'm not even sure they filed.  
9 The kinds of inquiries being made are  
10 strictly in the legal area, as to what is the  
basis for 11 it; background type of issues as to why the  
government 12 could, should or may be in a position to sue the  
13 tobacco companies.

14 MR. DOUGLAS: That's essentially true,  
Your 15 Honor, and why the people in the press would be  
calling 16 me for some sort of insightful reaction. It  
crosses 17 over into what one might call the policy realm,  
because 18 it's the Federal Government making --

19 THE COURT: What sort of attribution  
would 20 they make?

21 MR. DOUGLAS: As in the past, there was  
one a 22 couple of months ago; there was one that Mr. Heim  
23 raised the issue that I had been cited concerning  
24 Attorney General litigation. I wasn't here, of  
course, 25 to respond. But he noted at the time I was cited  
in my

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20235

1 individual capacity, and I believe in the name of  
the 2 organization that I am president of, which is  
called 3 Tobacco Control Law and Policy Consulting. That  
is my 4 moniker, as it were, that I operate under in  
ordinary 5 circumstances, and that's what I would be doing in  
this 6 case.

7 THE COURT: So, on the other hand, it  
works 8 the other way around. Tobacco companies, of  
course, 9 are going to be interviewed also and they'll want

to  
10 make some comment.  
11 MR. DOUGLAS: That's correct. And I  
believe  
12 they've already made comment in the press today  
about  
13 this particular issue.  
14 THE COURT: If they attribute these  
15 statements to you as Mr. so-and-so of whatever  
16 organization you're talking about, and don't make  
any  
17 reference to you as being co-counsel in this case  
or  
18 your activities in this case, at least that's a  
help.  
19 I mean, it doesn't focus in on our  
situation.  
20 I really don't think it would be a violation of  
the  
21 Court's gag order overall, because the issues are  
22 different. We've talked about that. The issues  
in the  
23 West Palm case were different; the issues in  
Minnesota  
24 case were different, and everything else.  
25 I just didn't want to get into the  
circus of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20236  
1 everybody meeting on the courthouse steps talking  
to  
2 the media.  
3 MR. HEIM: Well, you know, whatever Your  
4 Honor thinks. I don't want to make more of  
something  
5 than is there.  
6 I think after Your Honor expressed your  
view  
7 on the lawyers who were in this case, you know,  
all of  
8 us have tried to be and have been very, very, very  
9 careful. And I have instructed my client to also  
be  
10 very, very careful in making comments about this  
case  
11 or something that might be perceived to be this  
case.  
12 At some point we may need to get some  
more  
13 clarification from Your Honor as to what you think  
is  
14 okay and what you think is not okay.  
15 THE COURT: Well, they're really not  
talking  
16 about this kind of a case. That's a federal  
action and  
17 the other is a state action. The other was a  
medical,  
18 Medicaid action. The whole essence of it was  
19 different.  
20 MR. HEIM: The theory.

21 THE COURT: And the theory was  
different.  
22 So along those lines I really don't have  
any  
23 more problem, as long as what they're talking to  
you  
24 about is the legal analysis of the Federal  
Government's  
25 position as to why they feel they should or could  
bring

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20237  
1 a lawsuit, or shouldn't, as the case may be.  
2 MR. DOUGLAS: That's right.  
3 THE COURT: Yes. I really don't have a  
4 problem with it. I'm glad you cleared it first.  
5 MR. DOUGLAS: Absolutely.  
6 THE COURT: If you see anything in  
print, I'd  
7 like to see it.  
8 MR. DOUGLAS: I'll be happy to bring it  
in,  
9 if it appears.  
10 THE COURT: So we can look at it and see  
how  
11 far it went.  
12 MR. HEIM: I think that's right. I'd be  
13 concerned about anything -- because Mr. Douglas  
has  
14 been associated with this case, I'd be concerned  
about  
15 anything that might be construed as expressing an  
16 opinion on the issues in this case as opposed to  
some  
17 theory.  
18 THE COURT: Assuming you go out and talk  
19 about, what is it, Barnes?  
20 MR. HEIM: Barnes.  
21 THE COURT: I'm not sure if it's still  
alive  
22 and kicking or whatever. There may be a reason  
for  
23 them to want to talk to you about it. Those are  
issues  
24 that are somewhat different than Engle, isn't it?  
25 MR. HEIM: Barnes was a smokers' class  
action

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20238  
1 in Federal Court in Philadelphia where addiction  
was  
2 the critical issue. The lower court found that  
the  
3 question of addiction was an individual issue and  
4 refused to certify the class.  
5 The Court of Appeals -- and also then  
6 dismissed the claims of the individuals on statute  
of  
7 limitations grounds. The Court of Appeals for the

all of 8 Third Circuit affirmed straight down the line on  
a 9 those issues. I believe the plaintiffs have filed  
10 petition for rehearing en banc.  
close. 11 THE COURT: But those issues are very  
12 MR. HEIM: Very close, and I stayed away  
from 13 it.  
14 THE COURT: But this is something  
different. 15 Go ahead. If you feel you want to  
respond to 16 their inquiries, you may do so on a generic basis,  
if 17 you can.  
18 I don't know if the press will do it,  
try to 19 convince them, because of the order we have here  
and 20 because your name is associated. You'd like to  
not 21 give information or anything that you're talking  
about 22 from anything in this case or any reference in  
this 23 case. You can only ask them to do that.  
24 MR. DOUGLAS: Thanks, Your Honor. In  
fact, 25 over the months, because it has been my job, I  
have

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20239  
be 1 received calls, and because of the gag order, I'll  
2 explicit that they should not identify me, if they  
3 identify me at all, as being involved in this  
4 litigation.  
5 THE COURT: Okay, because I can't see  
any way 6 that the jury would ever get ahold of any of that.  
7 MR. HEIM: No. It's probably well that  
with 8 this maelstrom of activity over probably the next  
few 9 days, that at the end of the day today that Your  
Honor 10 make a special mention of avoiding publicity or  
radio 11 or television or newspapers that has anything to  
do 12 with tobacco.  
13 THE COURT: Okay. Thank you.  
14 MR. DOUGLAS: Thank you, Your Honor.  
15 THE COURT: All right. I guess we're  
about 16 ready to go.  
17 Did you get your copy?  
18 MR. ROSENBLATT: Yes. So I'm ready.  
19 THE COURT: Okay. Bring the jury out.



20 MR. ROSENBLATT: We pick up on 123. No,  
21 actually 122.  
22 THE COURT: 123, line 6.  
23 (The jurors entered the courtroom.)  
24 THE COURT: Okay. Everybody back from  
lunch.  
25 Everybody happy? Ready to go to work?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20240  
1 Let's see. We are on Page 123, Line 6.  
2 MR. ROSENBLATT: And we are continuing  
with  
3 Ellen Merlo's deposition.  
4 (The deposition of Ellen Merlo was  
continued  
5 to be read as follows:)  
6 Q. What does the vice-president of  
corporate  
7 affairs do?  
8 A. I have several functions that report to  
me:  
9 government affairs, communciations, public  
affairs,  
10 customer service, and then community relations in  
our  
11 plant communities over Richmond, Louisville.  
12 Q. Who heads up government affairs?  
13 A. Tina Walls.  
14 Q. She's the one who reports to you?  
15 A. That's correct.  
16 Q. And how often does she report to you?  
Is  
17 this on a daily basis?  
18 A. Yes.  
19 Q. Government affairs, it would seem to be  
20 self-explanatory, but tell me, give me a thumbnail  
21 description of what that is and how it differs  
from  
22 public affairs.  
23 A. Government affairs is actually the  
24 interaction and execution of our state-by-state  
25 government relations programs.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20241  
1 Q. Now, what do you mean --  
2 A. It's involved with legislation, working  
with  
3 elected officials, lobbyists, et cetera.  
4 Q. And what is public affairs?  
5 A. Public affairs is the program piece that  
6 supports government affairs, that develops  
legislation,  
7 legislative positions, programs that we may use  
against  
8 various strategies.  
9 Also, the customer service, consumer  
service  
10 piece of the business reports to public affairs.  
11 Philip Morris USA contributes reports to public

12 affairs. That's all part of that.  
13 Q. Who's in charge of contributions to  
political  
14 candidates?  
15 A. Well, public affairs, ultimately I'm in  
16 charge. I don't make all of the recommendations  
17 myself.  
18 Q. What is the policy in terms of political  
19 contributions, for example, let's say at the state  
20 level?  
21 A. That's all I concern myself with, is the  
22 state level.  
23 Q. You are not concerned at all with the  
local  
24 level?  
25 A. Yes, local.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20242

1 Q. State and city?  
2 A. Right.  
3 Q. You have nothing to do with the  
national?  
4 A. No.  
5 Q. Who handles that?  
6 A. That's handled out of our Washington  
7 relations office.  
8 Q. Who heads that up?  
9 A. Kathleen Lanahan.  
10 Q. What's the address of the Washington  
office?  
11 A. It's the Colorado Building on -- I  
forget the  
12 alphabet number of the street.  
13 Q. How big of a staff at the D.C. office?  
14 A. Offhand, I don't know the exact number.  
15 The Washington office handles government  
16 affairs for all Philip Morris Companies, Kraft,  
Miller  
17 and everybody. I don't know exactly how large a  
staff  
18 it is.  
19 Q. I mean, is it pretty large in the sense  
of  
20 over 100 employees?  
21 A. No, no.  
22 Q. Over 20?  
23 A. Yes.  
24 Q. Just so I have some idea, they deal with  
all  
25 the governmental regulations at the federal level?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20243

1 A. That's correct.  
2 Q. So in terms of the state and local  
level,  
3 what is the policy with respect to contributing  
either  
4 to political candidates or to people who are  
presently

5 holding office?  
6 A. Basically, it would be based on their  
7 position on various issues that might impact our  
8 business.  
9 MR. ROSENBLATT: Then we go to Page 140,

Line

10 12.  
11 Q. Are there any documents that are  
available to  
12 the public that list separately every cultural,  
13 sporting and other event or cause that any Philip  
14 Morris Company contributed to?  
15 A. Corporate contributions are a matter of  
16 public record. Yes, they would be identified.  
17 MR. ROSENBLATT: Page 147, Line 1.  
18 Q. What is the strategy of the tobacco  
industry  
19 today on the issue of smoking and health, other  
than to  
20 say to the public that it still hasn't been  
21 scientifically prove that cigarette smoking causes  
22 cancer, heart disease and other diseases and  
death?  
23 Isn't that the strategy that's been consistent  
with,  
24 from day one, and is still the strategy today?  
25 A. I believe there's a lot of information  
out

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20244  
and  
their  
don't  
that in  
thousands  
American  
been  
causes  
you,  
the  
1 there that people are privy to that they can read  
2 make up their own minds. Adults get to make up  
3 minds about the issue. There are doubts. We  
4 know. That's the answer.  
5 MR. ROSENBLATT: Page 148, Line 1.  
6 Q. Isn't the tobacco industry's position  
7 spite of the Surgeon General, in spite of its  
8 of scientific studies, in spite of the Center for  
9 Disease Control, in spite of the American Heart  
10 Association, the American Lung Association, the  
11 Cancer Society, our position is that it has not  
12 scientifically proven that cigarette smoking  
13 cancer, heart disease and other diseases?  
14 A. I believe it has not been scientifically  
15 proven.  
16 Q. I know you believe that. I'm saying to  
17 you believe that and you've said that and that's  
18 position of the tobacco industry on the issue of  
19 smoking and health?  
20 A. Uh-huh.  
21 Q. Correct?

22 A. Yes.  
23 MR. ROSENBLATT: Page 153, Line 9.  
24 Q. Do you write letters to political people  
25 along the line of: You should vote against this  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20245

1 particular piece of legislation because A, B, C,  
D?  
2 A. No, I do not.  
3 Q. That's another department?  
4 A. Yes. I don't do any lobbying.  
5 Q. But that department reports to you?  
6 A. Yes, it does.  
7 Q. Who in particular in that department?  
8 A. Tina Walls is my direct report.  
9 Q. Who is in charge of accommodation  
programs?  
10 Is that within your purview?  
11 A. Yes, it is.  
12 Q. What do you mean by the use of that  
term?  
13 A. Well, Philip Morris believes, as do  
other  
14 members of the industry, that the rights of both  
15 nonsmokers and smokers should be respected.  
Within  
16 that there's the opportunity to accommodate both  
17 preferences. We have developed a program called  
the  
18 accommodation program that we work with restaurant  
19 associations and other businesses to implement.  
20 MR. ROSENBLATT: We go to Page 167, Line  
22.  
21 Q. Are cigarettes addictive?  
22 A. I don't think they are.  
23 Q. Do you know?  
24 A. From my own personal experience, I'd  
have to  
25 say no.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20246

1 MR. ROSENBLATT: Page 169, Line 19.  
2 Q. What is the nicotine patch?  
3 A. What is the nicotine patch? It's a  
device  
4 that people put on their arm, or wherever, to, I  
5 assume, help them stop smoking.  
6 Q. Why would anyone need the nicotine  
patch?  
7 A. I don't know.  
8 MR. ROSENBLATT: Page 170, Line 14.  
9 Q. I want to know, as specifically as you  
can,  
10 tell me what each of the divisions that reports to  
you  
11 in your present job does.  
12 MR. ROSENBLATT: And then you go to Line  
6 on  
13 Page 171.

14           A.    They deal with legislators and  
legislation  
15           that impact our business one way or another,  
whether  
16           it's taxation, marketing restrictions, smoking  
17           restrictions, et cetera.  They monitor the market;  
they  
18           report on legislative activity; they supervise our  
19           lobbyists, consultants that work for us; they  
interact  
20           with other members of the industry from other  
companies  
21           and members of the Tobacco Institute in  
formulating  
22           plans and/or strategies, and/or whatever they're  
23           working on.  They provide the reporting back and  
forth  
24           to the New York office.

25           Q.    Did they interact at all with the  
Council for

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20247

1    Tobacco Research?  
2           A.    No.  
3           Q.    Now, you said that they interact with  
4           lobbyists.  Tell me specifically about that.  
5           A.    Well, we employ -- Tina Walls has a  
staff of  
6           eight or nine what we call regional directors that  
are  
7           located within the various states around the  
country  
8           that then supervise a group of states.  They have  
our  
9           contract lobbyists who we employ, report to each  
of  
10          them individually.  
11          Q.    What is the main function of the  
lobbyists?  
12          A.    The main function of the lobbyists is to  
work  
13          within the state legislatures and/or city  
councils,  
14          depending on the issue that we're dealing with, to  
15          protect the interest of the company and/or the  
16          industry.  
17          Q.    Lobbyists, for example, would play a  
role in  
18          trying to persuade legislators to vote against  
smoking  
19          bans, all-inclusive smoking bans; is that true?  
20          A.    Lobbyists deal with a multitude of  
issues  
21          including smoking bans.  Unless you told me about  
a  
22          specific piece of legislation, I can't tell you  
exactly  
23          what they would be doing.  
24                  MR. ROSENBLATT:  Page 177, Line 17.  
25          Q.    Let's go through the other divisions  
other

20248

1 than governmental affairs.  
2 A. Okay.  
3 Q. What's another division that reports to  
you?  
4 A. Communications.  
5 Q. Okay. Tell me with some specificity  
exactly  
6 what they're involved in doing.  
7 A. They develop press materials on various  
8 issues, like excise taxes, like smoking bans and  
9 accommodation, marketing restrictions, our  
business  
10 activity. They answer inquiries from the press  
when we  
11 get them. They work with the tobacco trade press  
in  
12 developing articles, answering questions, et  
cetera.  
13 Q. How big is their staff?  
14 A. A director and three people.  
15 Q. If the --  
16 A. Sorry. Five other people. We have two  
17 writers on staff in the communication group.  
18 Q. And let's say that the Wall Street  
Journal,  
19 or any nationally-respected magazine or newspaper,  
20 called you up and you verified it was a legitimate  
21 newspaper, legitimate reporter: We're doing a  
very  
22 in-depth article on the history of Philip Morris,  
on  
23 the history of some of the controversial issues  
over  
24 the last 30 or 40 years, and we'd like you to  
provide  
25 us with your most knowledgeable person or persons  
to

20249

1 sit down that we can really talk to in depth. Who  
2 would you supply them with, if anyone?  
3 A. I'd really need to have some specificity  
of  
4 exactly what they wanted to discuss, and it could  
be  
5 any number of people. It would not necessarily be  
6 someone from my group. It might be one of the  
other  
7 executives who works in a particular area that  
might  
8 have the information. Unless I really knew the  
subject  
9 matter, I wouldn't know who I would suggest that  
they  
10 interview.  
11 MR. ROSENBLATT: Page 186, Line 12.  
12 Q. Tell me, with as much specificity as you

can,  
13 what the public affairs department does.  
14 A. The public affairs department does  
several  
15 things. The public affairs department develops  
model  
16 legislation, identifies issues, works with various  
17 advocacy groups that might impact our issues, like  
the  
18 fire marshalls, if fire safety is an issue, we've  
done  
19 some work with fire marshalls. Works on  
developing the  
20 accommodation program and positioning it. Works  
on  
21 consumer and customer service. If consumers call  
and  
22 have questions about anything, a promotion that  
they've  
23 sent in for or want more information on various  
issues  
24 on accommodation, or who accommodates or what's  
going  
25 on in the various states, or how do I write to my  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20250  
1 Congressman, we supply that kind of information to  
2 them.  
3 And then also Philip Morris USA  
corporate  
4 contributions are administered through the public  
5 affairs group.  
6 Q. Who would be the person in charge of  
drafting  
7 the model legislation?  
8 A. It would be done in concert, obviously,  
with  
9 counsel. We have people called issues managers  
who  
10 deal with various issues. We have someone who  
works on  
11 taxation; we have someone who works on advertising  
12 restrictions; we have someone who works on smoking  
13 restrictions. Depending on which area it would  
fall  
14 into, that issues managers would work with the  
regional  
15 director in the government affairs area, and  
counsel  
16 and members of other companies, and the T.I.,  
17 et cetera, in addressing model legislation or  
whatever  
18 we were pulling together in that area.  
19 MR. ROSENBLATT: Page 199, Line 17.  
20 Q. What does Steve Parish do as senior  
21 vice-president of external affairs of Philip  
Morris?  
22 A. Well, he serves as part of the senior  
23 executive team reporting to Bill Campbell. He  
24 obviously has the corporate affairs group that  
reports

25 to him. The legal department reports to him.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20251

1 Q. And he has a world regulatory group that  
2 reports to him --  
3 MR. ROSENBLATT: Oh, I'm sorry. That  
was  
4 part of the answer. Say that.  
5 A. And he has a world regulatory group that  
6 reports to him.  
7 Q. What is the world regulatory group?  
8 A. It deals with issues of accommodation  
and  
9 smoking regulation on a worldwide basis.  
10 Q. What do you remember Dr. Carchman ever  
11 telling you about tobacco and health, one way or  
the  
12 other?  
13 A. Specific conversations I can't quote  
14 verbatim.  
15 Q. Not verbatim.  
16 A. Basically, that in general that while  
smoking  
17 might be a risk factor, there has been no  
scientific  
18 evidence, there's been no animal tests, there have  
been  
19 no inhalation tests that prove that smoking is a  
cause  
20 of disease.  
21 Q. And what has Dr. Houtton told you on  
that  
22 subject?  
23 A. Virtually the same thing.  
24 Q. So when you say that's your view, is  
that a  
25 view that you've gained pretty much from Carchman  
and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20252

1 Houtton?  
2 A. I think it's a view that I've developed  
over  
3 the years, based on feedback I've heard from other  
4 executives whose opinions I respect at Philip  
Morris.  
5 It certainly is an opinion that comes of  
discussion and  
6 reading on my own.  
7 Q. Are you aware of any safer cigarettes  
that  
8 have ever been developed, but which have not been  
9 marketed?  
10 A. I don't know.  
11 MR. ROSENBLATT: Page 204, line 4.  
12 Q. Tell me everything you know about Philip  
13 Morris Magazine.  
14 A. It was a magazine that was conceived  
several



15 years ago to -- and was based on editorial  
content,  
16 et cetera, that would be of interest to smokers  
that  
17 were on Philip Morris database. It was published  
on I  
18 believe a bimonthly basis, containing all kinds of  
19 various editorials, information, facts that might  
be of  
20 benefit to smokers, like places that accommodate,  
21 hotels, restaurants, had food articles, had -- it  
was  
22 pretty much a general interest-type of magazine  
that  
23 was mailed to several million people on a regular  
basis

24 for several years.

25 Q. Everyone in your database?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20253

1 A. Not everyone, no.

2 Q. By several million people?

3 A. To the best of my knowledge, yes.

Several

4 million people got it.

5 Q. Free?

6 A. Yes.

7 Q. This was a weekly?

8 A. No, bimonthly.

9 Q. Twice a month?

10 A. No. Six times a year.

11 Q. I see. Who was the editor of it?

12 A. Most recently, Cheryl Wechsler was the  
13 editor.

14 Q. And Philip Morris Magazine existed from

when

15 to when?

16 A. It ceased to exist about two or two and

a

17 half years ago. It published for anywhere from

three

18 to five years.

19 Q. Did you have any input into the decision

to

20 discontinue publishing it?

21 A. No.

22 Q. Why was it discontinued?

23 A. I would have to assume it just didn't

make

24 business sense to continue to publish it. I

really

25 don't know. I was not involved in the decision.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20254

1 MR. ROSENBLATT: Page 208, Line 8.

2 Q. When Philip Morris sells cigarettes in  
3 countries other than the United States, are they  
4 required to put warnings on their packages?

5 A. Depends on the guidelines and

regulations

6 within the country.

7 Q. In any country that does not require  
8 warnings, are there warnings voluntarily put on  
9 cigarettes by Philip Morris?

10 A. I don't know the answer to that.

11 MR. ROSENBLATT: Page 212, Line 21.

12 Q. Has Philip Morris ever had any other  
13 publication other than Philip Morris Magazine?

14 A. We sent out mailings to people on our  
15 database, something called Smokers' Caucus and

Smokers'

16 Alert, that deal with legislative issues that are

of

17 interest to people who smoke that want to protect

their

18 rights.

19 Q. Are these publications still ongoing?

20 A. Yes, they are.

21 Q. Smokers' Caucus did you say is one  
22 publication, Smokers' Alert is another

publication?

23 A. That's correct. Smokers' Caucus is

mailed to

24 about one million people on a somewhat frequent if

not

25 regular basis; and Smokers' Alert is mailed to a

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20255

1 smaller group of people when there is a specific

issue.

2 Q. How many get Smokers' Alert?

3 A. It could vary. 12,000, 15,000. It

depends

4 on the state or the issue.

5 Q. I have a lot of questions here about the  
6 Council for Tobacco Research.

7 A. You better get someone else to answer

them.

8 Q. There's no point in my asking them of

you and

9 certainly no point in my asking you about special  
10 projects?

11 A. I've never heard of special projects.

12 Q. Have you ever heard of the Council for  
13 Tobacco Research before you read the Wall Street  
14 Journal article that we talked about earlier?

15 A. I don't think so.

16 Q. To your knowledge is anyone doing

research in

17 the tobacco industry, Philip Morris or anyone in

the

18 tobacco industry, to prove or disprove whether

smoking

19 causes cancer and other diseases?

20 A. I don't know the answer to that.

21 Q. Have you ever testified before political  
22 bodies?

23 A. No.

24 Q. Congress, state legislatures?

25 A. No.

20256

1 Q. You've never been personally involved in  
2 that?  
3 A. No, I have not.  
4 Q. Are you Philip Morris' chief liaison  
with the  
5 Tobacco Institute?  
6 A. I'm certainly one of the chief liaisons  
with  
7 the tobacco industry.  
8 MR. ROSENBLATT: And then go to --  
9 A. The institute, I'm sorry.  
10 MR. ROSENBLATT: And that's the end of  
this,  
11 Judge.  
12 THE COURT: Thank you, ma'am.  
13 Okay. I guess we have to have a little  
14 discussion as to what we're going to do.  
15 (Discussion off the record.)  
16 THE COURT: Let's give you folks a short  
17 break while we do some talking.  
18 (The jurors exited the courtroom.)  
19 THE COURT: Okay. There are three more  
20 depositions here that I've got. Each one presents  
its  
21 own unique problem.  
22 MR. HEIM: Which ones do you have there,  
23 Judge?  
24 THE COURT: I have Rosenbaum, Orlowsky  
and  
25 Fulford. At least two of them, if not three of  
them,

20257

1 relate to Liggett.  
2 MS. LUTHER: Fulford, Judge, you do not  
have  
3 a completely color-coded copy of the deposition.  
I  
4 started to do it last night and it got so insane  
with  
5 my -- plaintiffs' designations, my objections to  
the  
6 plaintiffs' designations, the co-defendants'  
objections  
7 to the plaintiffs' designations, the  
co-defendants'  
8 designations, my designations, then the  
plaintiffs'  
9 crossdesignations, I lost my mind.  
10 THE COURT: Welcome to the club.  
11 MS. LUTHER: The best way to do it would  
be  
12 just to argue it verbally, and I gave you a chart  
with  
13 everything on it.  
14 THE COURT: And that's even worse,  
because I

15 can't go back and forth page by page. So that's a  
16 problem.  
17 MR. ROSS: Just to complicate matters  
worse,  
18 Orlowsky -- this is fairly brief -- they did some  
very  
19 late additional designations, so we have a few  
more  
20 objections.  
21 THE COURT: Just a couple.  
22 MR. ROSS: Just a couple. But I wanted  
to go  
23 ahead and file these, which we hadn't filed.  
24 THE COURT: If the pink is the late  
25 designation. So there really isn't that much.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20258  
1 MR. ROSS: That's true.  
2 THE COURT: I don't have much of a  
problem  
3 with any of that. Orlowsky was with --  
4 MS. LUTHER: Probably Lorillard, Judge.  
5 THE COURT: Let's see. Is he Lorillard?  
6 MR. ROSS: Orlowsky was basically the VP  
of  
7 marketing.  
8 THE COURT: Lorillard. Okay.  
9 The problem with the Liggett people is  
10 getting back into this issue of putting the  
addiction  
11 warning on the label. That to me is --  
12 MR. ROSENBLATT: Just to remind you,  
with  
13 respect to LeBow's testimony, you did not allow me  
to  
14 introduce the pack with the warning, with the  
actual  
15 warning. You did allow him to testify that, yes,  
16 there's a warning on all his cigarettes which  
says:  
17 Warning: Smoking is addictive.  
18 THE COURT: I know. That's what bothers  
me.  
19 I don't know how far over the line we were, if we  
went  
20 over the line at all.  
21 MR. ROSENBLATT: One CEO admits that the  
22 product is addictive. All the other CEOs deny it.  
23 THE COURT: That's one thing, but to put  
it  
24 on the label and put the label on the packet, then  
you  
25 start talking about the federal preemptions and  
all

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20259  
1 that sort of thing.  
2 MR. MOSS: Judge --  
3 THE COURT: I know what your argument

was.  
4 MR. ROSENBLATT: You found an exquisite  
5 balance in LeBow's testimony. You kept out the  
pack  
6 and allowed him to testify.  
7 MS. LUTHER: To a certain extent, Judge,  
8 Fulford's testimony is really cumulative of what's  
9 already in the record of what LeBow said.  
10 MR. HEIM: Yes. What's in there is in  
there.  
11 I actually don't recall whether LeBow said that  
the  
12 warning is on the pack.  
13 MR. ROSENBLATT: He did. I reviewed  
that.  
14 THE COURT: I want to ask you folks to  
do me  
15 a favor.  
16 MS. LUTHER: I recall that.  
17 THE COURT: Can somebody pull LeBow's  
18 testimony?  
19 MR. HEIM: On that point?  
20 MS. LUTHER: I have it back at the  
office.  
21 THE COURT: I mean the whole thing.  
Didn't  
22 take that long.  
23 MR. HEIM: Chris can find it. We'll get  
it  
24 for you.  
25 MR. ROSENBLATT: I don't have it with  
me, but

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20260  
1 I had occasion to review it recently and I can  
2 represent to the Court that testimony is in, that  
--  
3 THE COURT: I know it's in.  
4 You get these terrible boughts with  
5 hindsight. I just didn't want to get into that  
area  
6 too deeply through other people if it wasn't  
really  
7 necessary.  
8 MR. ROSENBLATT: You know, it was hard  
not  
9 to, Judge. You remember part of the cross was:  
Well,  
10 you know, like these aren't really your honest  
11 opinions; you're obligated to say this under the  
12 settlement agreements.  
13 THE COURT: It was tied in with the  
fraud  
14 count. Depending on where the Supreme Court goes  
with  
15 that, that's another story.  
16 MR. HEIM: We'll pull it and look at it.  
17 THE COURT: Let's set the Fulford thing  
18 aside.  
19 Rosenbaum.  
20 MS. LUTHER: Rosenbaum is a director and

time. 21 officer of Brooke Group, at least he was at the  
him 22 THE COURT: Have the same problem with  
know 23 when it comes to that sort of question. I don't  
24 what to do with it.

most 25 MR. ROSENBLATT: It probably makes the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20261  
to 1 sense, in view of what Kelly has said, you know,  
what 2 just go through it and forget who is designating  
that. 3 and just make your --  
4 THE COURT: I'm not concerned about  
5 That doesn't really bother me. It's repeated  
6 references to the warning labels in addition to  
what 7 the Federal Government has mandated.  
8 See, if that's error and that's not  
something 9 that can slide by easily, I don't want to say that  
it 10 is fundamental and I don't want to say that it is  
even 11 insurmountable. But if it is error, to have LeBow  
12 talk about it, why compound it?  
13 MR. REID: We also had some objections  
to 14 Rosenbaum. I think you've had a chance to look at  
15 them.  
16 THE COURT: I've looked at them. But  
17 sometimes just by looking at the words, the  
objections 18 don't mean much until I understand why you're  
making 19 these objections.  
20 MR. HEIM: Maybe we should do Orlowsky,  
21 Judge, because he doesn't have these issues.  
22 THE COURT: I've done Orlowsky. I could  
do 23 it right now. I don't have a problem. It's the  
other 24 two that really bother me. So I'm going to set  
the 25 Fulford thing aside and Rosenbaum aside.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20262  
can. I 1 If you want to go through Orlowsky, I  
2 mean, there wasn't much to it.  
3 MR. ROSS: Just so you know, Your Honor,  
what 4 I just filed is what we objected to, all the new  
5 designations.  
6 THE COURT: All the what?

late 7 MR. ROSS: We have objected to the very  
8 designations that just came in, the pink ones.  
and I 9 THE COURT: But when I pick up a depo  
10 see: Question: State your name please, and an  
11 objection raised, I worry.  
12 MR. ROSS: Not on this one.  
13 THE COURT: Yes.  
14 MR. ROSS: No. We didn't object to  
that.  
15 THE COURT: Sure you did. You've got  
orange  
16 next to it.  
17 MR. ROSS: Not on my copy it's not.  
18 THE COURT: The one that I'm working  
with. I  
19 mean, it's funny.  
20 MR. ROSS: We'll have to pick up where  
Bob  
21 said. We'll have to fire that person. There's  
22 something wrong because we clearly didn't object  
to  
23 that.  
24 MR. REID: You didn't sustain it, in any  
25 event.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20263  
1 THE COURT: For example: What is your  
2 business occupation? Objection.  
3 MR. ROSS: Something is wrong.  
4 THE COURT: I had the impression that if  
you  
5 were going to object right off the bat, you didn't  
want  
6 any of his testimony in for some reason.  
7 MR. ROSS: Maybe I better take a look at  
8 that. Apparently we've got the wrong color.  
That's  
9 clearly got orange and it's clearly wrong.  
10 So I have --  
11 THE COURT: Okay. Let's talk about Page  
4,  
12 Line 7 through 9, overruled.  
13 15 through 18, overruled.  
14 MR. ROSS: Hold on. You already got  
ahead of  
15 me, because I hadn't even sat down.  
16 Page 4.  
17 THE COURT: Page 4, 7 through 9.  
18 MR. ROSS: Okay. Well, that wasn't  
objected  
19 to.  
20 THE COURT: Overruled.  
21 15 through 18, overruled.  
22 And on Page 5, 1 through 3, overruled.  
23 MR. ROSS: That wasn't objected to  
either.  
24 THE COURT: I know.  
25 Page 6, Lines 2 and 3, overruled.  
TAYLOR, JONOVIC, WHITE & GENDRON

20264

1 Page 6, 17 through 25, overruled.  
 2 MR. ROSS: Yours is clearly all wrong  
 because 3 none of this was objected to.  
 4 THE COURT: Page 7, 1 through 11,  
 overruled. 5 Then we skip from there to Page --  
 6 MR. ROSS: First objection is on Page  
 16, 7 first actual objection.  
 8 THE COURT: Page 16 --  
 9 MR. ROSS: Line 14.  
 10 THE COURT: Line 14. And I overruled  
 that 11 objection.  
 12 And Page 17, overruled, 7 through 25.  
 13 And 18, Lines 1, 2, 3 and 4, overruled.  
 14 I think you should have put in Lines 5  
 15 through 8, although it wasn't marked, to make  
 sense out 16 of the answer.  
 17 MR. ROSS: Okay.  
 18 THE COURT: So on Page 18, lines will  
 read 19 from 1 through 8.  
 20 Line 19, 12 through 25, overruled.  
 21 Page 20, Lines 1 through 18, overruled.  
 22 Page 21, 1 through 4, overruled.  
 23 And 17 and 18 overruled.  
 24 MR. ROSS: 16 is missing there on 21,  
 because 25 what they designated was an answer without a  
 question.

TAYLOR, JONOVIC, WHITE & GENDRON  
 COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20265

1 THE COURT: You're right. Who is the  
 2 immediate supervisor? So 16, 17 and 18.  
 3 Page 22, Lines 1 through 25, overruled.  
 4 23, Lines 1 through 10, overruled.  
 5 Let me go back again.  
 6 MR. ROSS: He's got all these questions  
 about 7 what are all these other people --  
 8 THE COURT: 1 through 8 is overruled.  
 9 9 and 10 is sustained.  
 10 The reason I did that is because further  
 down 11 I sustained the objection as to Stevens and as to  
 12 Spears.  
 13 On Page 23, Lines 9, 10, 19, 20, 21, 24  
 and 14 25 are sustained.  
 15 Page 24, Lines 20 through 25, Spears at  
 that 16 time was an attorney?  
 17 MR. ROSS: No. Spears, at the time of  
 this 18 deposition, would have been the chief operating



in 19 officer. He would have been the number two person  
20 the company.  
21 THE COURT: So I let that in, 20 through  
25, 22 because it was general. Page 25, Line 1.  
23 Then I believe we skipped Page 30.  
24 Question on Line 24 and 25 is all right,  
25 overruled.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20266  
1 31, 1 through 15, overruled.  
2 16 through 20, sustained.  
3 MR. ROSS: We're on 31?  
4 THE COURT: Yes. 21 through 25,  
overruled.  
5 Page 32, Line 1, overruled.  
6 32, Lines 10 through 22, overruled.  
7 Page 33, Line 16 through 18, sustained.  
8 Page 36, Line 11 through 25, overruled.  
9 Page 37, 1 through 23, overruled.  
10 Page 41, 23 through 25, overruled.  
11 42, 1 through 9, overruled.  
12 Page 46, 23, 24, 25 are overruled.  
13 And 47, 1 through 9, overruled.  
14 Then I think we skip to 62. That's  
where I  
15 got my first pink.  
16 MR. ROSS: Yes.  
17 THE COURT: I sustained the objection,  
Line  
18 20 through 24.  
19 Then there's one on 25 in blue.  
20 MR. ROSS: That was a crossdesignation.  
21 THE COURT: And 63.  
22 MR. ROSS: That was our designation, our  
23 original crossdesignation. But that was  
contingent  
24 upon --  
25 THE COURT: I was looking at this thing  
--

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20267  
1 let me see where I'm going with it -- because  
there's  
2 another designation for plaintiff on Page 63, Line  
11.  
3 MR. ROSS: The two pink are what they  
just  
4 added. Of course, one of our objections was all  
these  
5 were supposed to have been done back in June.  
6 THE COURT: I'm sorry?  
7 MR. ROSS: I said one of our objections  
was  
8 all of these were supposed to be done back in  
June. We  
9 just got these two days ago, the pink.  
10 THE COURT: Well, it's really not the

issue  
11 here.  
12 So I excluded Page 62, 20 through 25,  
and 63,  
13 1 through 18.  
14 Page 65 --  
15 MR. ROSS: The part that was blue was  
our  
16 original designation, and there was no objection  
raised  
17 to that. That was 25 on 62.  
18 THE COURT: Fine. You want to put Line  
25  
19 through Line 10 on Page 63 in?  
20 MR. ROSS: As long as youth marketing  
has  
21 been allowed in the case, that's why we designated  
it.  
22 THE COURT: Youth marketsing is not the  
same  
23 as them actually selling cigarettes to a minor.  
The  
24 question initially was: How does Lorillard make  
sure  
25 that miners don't purchase cigarettes?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20268  
in,  
1 MR. ROSENBLATT: If their designation is  
2 that should certainly be in.  
3 THE COURT: Then you want to get to the  
4 selling of the cigarettes to miners, which is  
another  
5 step removed.  
6 MR. ROSS: I don't have a problem if you  
take  
7 the whole thing out.  
8 THE COURT: That's what I did; I took  
the  
9 whole thing out.  
10 64, 4 through 22 is overruled, and the  
11 designation on 23 and 24 is allowed.  
12 68, 11 through 14, overruled.  
13 18 through 22, overruled.  
14 23 through 25, sustained.  
15 Page 69, Line 1, sustained.  
16 Question should start on Line 4 for the  
17 answer on Line 8. So 4 through 8 would be  
overruled.  
18 Lines 12 through 19, sustained.  
19 20 through 25, overruled.  
20 70, Lines 1 and 2, overruled.  
21 12 through 17, overruled.  
22 72, 17 through 25, overruled.  
23 73, 1 through 12, overruled.  
24 Page 76, 20 through 25, overruled.  
25 77, 1 through 8, overruled.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20269

here 1 78, now we get into this little issue  
2 about Surgeon General.  
3 MR. ROSS: Obviously our position here  
is 4 it's just full of hearsay.  
5 THE COURT: Well, I questioned the whole  
6 thing, frankly.  
7 MR. ROSS: Remember, this isn't a  
scientist 8 or anybody else. This is somebody in marketing.  
9 Clearly it would be hearsay.  
10 THE COURT: I sustained the objections  
on 11 Lines 20 through 25 on 78, all of 79 and 80;  
although 12 there was one question they threw in the middle of  
it 13 on 79, Lines 3 through 5, which doesn't relate to  
the 14 issue of the Surgeon General. So it's sort of  
like in 15 the middle. So I allowed that question.  
16 MR. ROSS: So 3 through 5 is in?  
17 THE COURT: On 79, yes.  
18 Then we're on Page 80, Line 21 through  
25, is 19 all right.  
20 81, 1 through 10 is all right.  
21 And 11 through 25 is sustained, as is 1  
22 through 6 on Page 82.  
23 83, Lines 1 through 7, sustained.  
24 17 through 25, sustained.  
25 84, that page sustained.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20270  
1 85, Lines 1 through 3, sustained.  
2 4 through 20, overruled.  
3 88, we get to ETS here now.  
4 MR. ROSS: This is directly ETS. Of  
course, 5 this was a Broin deposition.  
6 THE COURT: Yes, I realize that.  
7 I sustained the objections to Page 88,  
Lines 8 9 through 25, and 1 through 4. And allowed 5  
through 9 25 over objection.  
10 92, 5 through 13 -- actually, 5 through  
14, 11 is sustained.  
12 97, I looked at it, questioned it, said,  
13 well, for whatever value it may have, I let it in,  
3 14 through 9.  
15 And Page 98, 1 through 7.  
16 99, excluding 2 through 22.  
17 23 through 25 is overruled.  
18 And Page 100, 1 through 6 is overruled.  
19 MR. ROSS: You got ahead of me. 100 --  
20 THE COURT: Page 100, 1 through 6 is

21 overruled.  
22 7 through 17, sustained.  
23 101, 6 through 20, overruled.  
24 106, it's got sort of a repetitious  
question  
25 here.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20271  
1 MR. ROSS: Yes. Same questions we left  
in.  
2 THE COURT: But they threw in ethnic  
groups  
3 here. The answer is a little bit more detailed.  
So I  
4 allowed it in.  
5 And then they added 13 through 23.  
6 MR. ROSS: Yes.  
7 THE COURT: And you object to that?  
8 MR. ROSS: Yes.  
9 THE COURT: Why?  
10 MR. ROSS: We object to the whole line  
of  
11 questioning because we don't think it's relevant.  
It  
12 is also cumulative. But you left it in before.  
13 THE COURT: Overruled.  
14 I have a blue designation on 107, Lines  
9  
15 through 20.  
16 MR. ROSS: That's our crossdesignation.  
17 THE COURT: I'll allow it.  
18 Page 108, Lines 7 through 15, overrule  
the  
19 objection.  
20 109, 20 through 25, for whatever value,  
I  
21 allowed it.  
22 110, 1 through 25, overrule the  
objection.  
23 Page 111, Lines 1 through 4, overruled.  
24 114, Lines 1 through 14, sustained.  
25 118, this one I excluded, sustained the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20272  
1 objection, 2 through 18.  
2 Page 119, 23 through 25, sustained.  
3 The whole Page 120, sustained.  
4 Page 121, 1 through 13, sustained.  
5 122, 14 through 25, overruled.  
6 And I'm missing Page 123, but I don't  
think  
7 there's anything on it.  
8 MR. ROSS: Yes, there is.  
9 THE COURT: Can I take a look at that  
page?  
10 I think that's the only page. That's the last of  
it?  
11 MR. ROSS: Yes, that is the last page.  
I

12 have just a minuscrypt.  
13 THE COURT: I'll allow that in, 1  
through 21 on 123.  
14  
15 MR. ROSS: That's it. You can have  
that.  
16 That's an extra copy.  
17 THE COURT: Okay. We'll take five.  
18 MR. ROSENBLATT: But that's not going to  
take  
19 very long.  
20 THE COURT: I'm doing the best I can for  
you.  
21 MR. ROSENBLATT: And I've got some  
documents,  
22 depending upon what you want to do.  
23 THE COURT: Depending what you want to  
do.  
24 If you're going to read three or four page  
documents  
25 that are only snippets, it may be one thing, but  
whole

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20273

1 documents --  
2 MR. ROSENBLATT: I have a few documents.  
3 THE COURT: I'm sure Mr. Moss has  
something  
4 to say about that.  
5 MR. ROSENBLATT: But he said it already.  
6 MR. MOSS: What I said was right before  
we  
7 left I asked to discuss it and I asked everyone to  
8 think about it, so I didn't say it all.  
9 MR. HEIM: Today.  
10 MR. ROSENBLATT: Today. Thanks, Bob.  
11 THE COURT: We'll take five.  
12 (A brief recess was taken.)  
13 MR. ROSENBLATT: I have a little bit of  
a  
14 suggestion, Judge, because this is probably  
getting  
15 pretty confusing to the jury, so you might want to  
tell  
16 them what -- I mean, you've told them --  
17 THE COURT: Tell them what?  
18 MR. ROSENBLATT: What's going on, the  
breaks.  
19 THE COURT: What is going on?  
20 MR. ROSENBLATT: Basically, from our  
21 standpoint, you need to --  
22 THE COURT: Going over the --  
23 MR. ROSENBLATT: That process  
frequently. In  
24 other words, I want to introduce depositions;  
there are  
25 objections; there's a discussion; you've got to  
rule on

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20274

reading 1 them, and that process can take longer than  
some 2 what you've decided to allow in. So it gives them  
that. 3 kind of understanding.  
4 THE COURT: I think they understand  
5 MR. ROSENBLATT: I'm sure they do.  
6 MR. HEIM: My concern about how that  
might be 7 said is it looks like we're somehow impeding them.  
8 THE COURT: Obstructionist.  
9 MR. HEIM: I don't mind, as long as you  
say 10 that these are things that ordinarily should have  
been 11 done before the trial started, but because the  
12 plaintiffs are disorganized, they didn't get  
around to 13 it. If you add that, that's okay.  
14 MR. ROSENBLATT: That's fine, as long as  
you 15 add the following: If you're confused about who's  
16 the -- which side is the obstructionist in this  
case, 17 count the number of sidebars and count the number  
that 18 were asked for by the plaintiffs.  
19 MR. REID: That means who's causing them  
to 20 happen. We agree with that, based on who's  
causing 21 them to happen.  
22 THE COURT: Okay. Has everybody vented?  
23 Good.  
24 We will do Martin Orlowsky, which  
shouldn't 25 take too long. Then we've got to decide whether  
we're

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20275

or 1 going to do another depo or read some testimony,  
2 some exhibits.  
3 Let me ask you a question. After these  
4 depositions, the ones that I have that we haven't  
done 5 yet, the Rosenbaum and the Fulford thing, what  
else is 6 there?  
7 MR. ROSENBLATT: Funny you should ask,  
Judge. 8 Arthur J. Stevens I have for you.  
9 THE COURT: Goody. Another 300-page  
one. 10 MR. ROSENBLATT: And I have Dr. John  
Holbrook 11 for you, but we have greatly reduced our  
designations 12 so as to pretty much limit him to his experiences

with  
13 the tobacco industry.  
14 I've got a listing here which shows you  
that  
15 about 15 percent of what we originally designated,  
16 we're still designating with respect to Holbrook.  
So  
17 I've got that.  
18 I've got the Holbrook deposition and the  
19 Stevens deposition. I'm always reluctant to hand  
these  
20 to you as your overnight assignment.  
21 THE COURT: I gave up homework when I  
got out  
22 of high school.  
23 MR. ROSENBLATT: And Spears is coming  
later.  
24 THE COURT: Spears is coming when?  
25 MR. ROSENBLATT: Later, either later  
today --

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20276  
1 yes, later today, Spears, who is the CEO of  
Lorillard.  
2 THE COURT: And when you finish with  
those  
3 three?  
4 MR. ROSENBLATT: We're waiting for  
responses.  
5 Dr. Harmon McAllister, who is with the Council for  
6 Tobacco Research; Kornegay of the Tobacco  
Institute;  
7 Edward Horrigan, who was the CEO of Liggett,  
formerly  
8 the CEO of Reynolds; Thomas Houston, Dr. Thomas  
9 Houston. And then we're considering discussing or  
10 reading excerpts from several defense experts.  
11 We're getting there, Judge. We're  
getting  
12 there. We really are.  
13 THE COURT: Okay.  
14 MR. MOSS: Our silence on the last  
category  
15 should not be taken as any type of acceptance.  
There  
16 are some rules that we have here, so I don't know  
what  
17 he's talking about. I guess when we see it, we  
can  
18 take it up. But I don't want Your Honor to think  
that  
19 by our -- I guess you don't think that anymore.  
20 THE COURT: Never did.  
21 MR. REID: We had also asked about the  
list  
22 for Friday.  
23 THE COURT: What's going to happen  
Friday?  
24 MR. ROSENBLATT: Susan said that she  
faxed  
25 something.

20277

1 MS. LUTHER: Something was faxed to my  
2 office. I haven't seen it, though.  
3 THE COURT: That would be the list of  
items  
4 that you want to take up?  
5 MR. ROSENBLATT: For Friday.  
6 THE COURT: Let me have these wonderful  
7 things.  
8 MR. ROSENBLATT: They're thick, but  
they're  
9 not all that much that we would be reading.  
10 (Discussion off the record.)  
11 MR. ROSS: Judge, Stevens, we have to  
make  
12 sure you have a copy of our objections, because  
that  
13 was the first notice we got of it. And also on  
14 Holbrook, they changed their designations.  
15 THE COURT: You're telling me that this  
thing  
16 is not marked up now?  
17 MR. ROSS: I have no idea. We filed  
18 objections. I just don't know if you have a copy,  
the  
19 explanation of the objections.  
20 THE COURT: I don't see it here.  
21 How did you mark these? This is not  
colored.  
22 MR. ROSS: We'll have to get you  
23 color-coding.  
24 THE COURT: I have black stripes.  
25 MR. ROSS: That's not going to help.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20278

1 THE COURT: That's obviously a Xerox  
copy.  
2 The other one is color-coded. The one that's  
Holbrook  
3 you better check.  
4 MS. BERGER: That is the reduced  
version.  
5 MR. ROSENBLATT: Very reduced.  
6 THE COURT: But when I see things that  
are on  
7 here, I can't tell, because it's not color-coded;  
it's  
8 just a black line; for example, my Page 120, which  
I  
9 just opened it up to.  
10 MR. ROSENBLATT: Page 20.  
11 THE COURT: 120.  
12 MR. ROSS: Judge, as we understand what  
13 they've done here, they've only designated pages  
--  
14 MR. ROSENBLATT: That's not marked.  
Only  
15 what's in yellow here is what's designated from



16 Holbrook. That's few pages.  
17 THE COURT: Well, I don't see any yellow  
in  
18 this whole thing. Let's see. Your pages are  
different  
19 numbered because you start with Page 7808 and I  
don't.  
20 So you're talking about a trial transcript. My  
depo  
21 pages start with one.  
22 MS. BERGER: The beginning starts with  
Broin  
23 trial testimony. This is the second page. Flip  
to the  
24 second page. That's this depo. And then this is  
what  
25 I just handed you.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20279  
on  
1 THE COURT: So all you're reading starts  
2 Page 151?  
3 MS. BERGER: Correct. It is marked.  
4 THE COURT: Okay. There's very little  
of it.  
5 We could do that in two seconds. Okay. That's  
good.  
6 That takes care of that one.  
7 MR. ROSS: Judge, just so you  
understand,  
8 what they've done on Holbrook, apparently they  
want to  
9 read his credentials from the Broin transcript,  
then  
10 they want to read some stuff on Page 151 to 168.  
11 THE COURT: They didn't have the  
credentials  
12 in the depo?  
13 MR. ROSS: I don't know why they've done  
it  
14 that way.  
15 THE COURT: Nobody asked them?  
16 MR. ROSS: But we objected to the entire  
17 designation at this point. You'll see, when you  
look  
18 at what they designated, that they claim they just  
want  
19 to ask him about some personal experiences.  
20 You're going to find it all  
objectionable,  
21 I'm quite confident, because he doesn't remember  
any of  
22 them.  
23 But even if it were not objectionable,  
if  
24 that were true, then we would object to 20 pages  
of his  
25 corrections from the Broin transcript, because  
what's

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20280

1 designated, apparently he's not being designated  
as an 2 expert in anything.  
3 THE COURT: What is he being presented  
as? A 4 CEO?  
5 MR. ROSENBLATT: No, no. This is a  
6 physician, Dr. Holbrook. No, he's a physician,  
but 7 he's talking about -- he's been involved with  
nearly 8 all the Surgeon General's Reports. He's written  
about 9 tobacco and addiction.  
10 THE COURT: You listed him as an expert?  
11 MR. ROSENBLATT: Correct. But  
anticipating 12 the argument about cumulative and all that  
business, 13 we've basically limited the substance of his  
testimony 14 to his personal involvement with the tobacco  
industry. 15 THE COURT: All right. I'll take a look  
at 16 it.  
17 I don't have your objections, your  
written 18 objections?  
19 MR. ROSS: We didn't know he was  
bringing 20 those over today, so we've got to get those over  
to 21 you.  
22 MR. ROSENBLATT: And here is a copy of a  
23 letter, Judge, that we sent to defense counsel  
about 24 the testimony of Dr. Holbrook, so you might as  
well 25 have it along with the depo.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20281

1 THE COURT: I have a mini-transcript.  
2 Then I guess we can go ahead and proceed  
with 3 Orlowsky.  
4 Let's get the jury out.  
5 (The jurors entered the courtroom.)  
6 THE COURT: Okay. Have a seat, folks.  
We'll 7 get under way.  
8 We are now going to do another  
deposition. 9 MR. ROSENBLATT: This is the testimony  
of 10 Martin Orlowsky, O-R-L-O-W-S-K-Y, taken in New  
York 11 City, October 16, 1993. And Mr. Hoag is going to  
play

12 Mr. Orlowsky.  
13 Page 4.  
14 (The deposition of Martin Orlowsky was  
read  
15 as follows:)  
16 Q. State your name, please.  
17 A. Martin L. Orlowsky.  
18 MR. ROSENBLATT: Going to Line 15.  
19 Q. What is your business or occupation?  
20 A. I'm employed by Lorillard Tobacco  
Company.  
21 Q. In what capacity?  
22 A. I'm executive vice-president of  
marketing.  
23 Q. How long have you occupied that post?  
24 A. Approximately three to four months.  
25 Q. What did you do prior to that time?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20282  
1 A. I was senior vice-president of  
advertising  
2 and brand management for Lorillard Tobacco  
Company.  
3 Q. And how long did you have that job?  
4 A. About two and a half years.  
5 Q. How long have you been with Lorillard  
all  
6 together?  
7 A. It will be three years this month.  
8 MR. ROSENBLATT: Page 6, Line 2.  
9 Q. What did you do before that?  
10 A. I worked for Nabisco Brands, part of RJR  
11 Nabisco.  
12 MR. ROSENBLATT: Going down to Line 17.  
13 Q. Before that?  
14 A. Before that I was employed by RJ  
Reynolds  
15 Tobacco Company.  
16 Q. Doing what?  
17 A. My last position there was executive  
18 vice-president, marketing and sales.  
19 Q. How long did you work at RJ Reynolds all  
20 together?  
21 A. RJ Reynolds Tobacco Company?  
22 Q. Yes.  
23 A. Nine years.  
24 Q. And what different positions did you  
hold  
25 there during those nine years?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20283  
1 A. I was executive vice-president of  
marketing  
2 and sales; I was senior vice-president of  
marketing; I  
3 was vice-president of marketing; I was director of  
4 marketing services; and I was media director.  
5 Q. What did you do before RJ Reynolds?  
6 A. I worked for an advertising agency.

14. 7 MR. ROSENBLATT: We go to Page 16, Line  
8 Q. Specifically, does cigarette smoking  
cause 9 disease?  
10 A. No, I do not believe that.  
11 Q. Based on what?  
12 A. Based on what I've heard, read and seen.  
13 Q. Have you read any of the Surgeon  
General's 14 Reports on smoking and health?  
15 A. I don't think I've read them in depth,  
no. 16 Q. Have you read any of the literature put  
out 17 by the American Cancer Society, the American Lung  
18 Association, the American Heart Association?  
19 A. It's possible.  
20 MR. ROSENBLATT: And then continue your  
21 answer on Line 7, Page 17.  
22 A. At some point in time.  
23 Q. What information do you have which  
causes you 24 to discount all that information?  
25 A. What I've read and seen or heard, I have  
yet

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20284  
any -- 1 to see anything that states clearly that there's  
2 that smoking causes any disease.  
3 Q. Well, isn't it true that on Lorillard  
4 cigarettes there's a warning label that says:  
Smoking 5 causes cancer?  
6 A. There's a warning label on the  
cigarettes, 7 yes.  
8 Q. It's not true?  
9 A. It is a statement that we apply on the  
10 packaging by virtue of legislation.  
11 Q. But you think personally that it's  
12 misinformation?  
13 A. As I said, I don't think smoking causes  
14 disease in my personal view.  
15 Q. You don't think it causes -- not only  
don't 16 you think it doesn't cause cancer, you think it  
doesn't 17 cause heart disease, you also think it doesn't  
cause 18 any disease?  
19 A. That's correct.  
20 Q. Based on what?  
21 A. As I said, information I've read, heard  
and 22 seen. I've yet to see anything that states that  
it 23 does.  
24 MR. ROSENBLATT: Page 19, Line 12.  
25 Q. Can you tell me specifically what you've

20285

1 seen, read or heard?  
2 A. I've read articles in the news media  
3 regarding the issue. I've read at various points  
in  
4 time various overviews of those kinds of pieces of  
5 information. I've seen broadcast media talking  
about  
6 the issue. I've heard politicians talk about the  
7 issue. I've heard scientists talk about the  
issue.  
8 Various sources.  
9 Q. I'll tell you what I'm looking for and  
maybe  
10 you can't answer it, but what I'm looking for is  
for  
11 you to tell me that some time in 1993 I read an  
article  
12 in the New York Times or in the New England  
Journal of  
13 Medicine by a specific individual, and I relied on  
that  
14 article.  
15 A. I --  
16 Q. All you've done so far is give me very  
vague,  
17 generalized stuff about the media.  
18 Now maybe you don't have -- I'm looking  
for  
19 something specific. I read an article by such and  
such  
20 a doctor from such and such university?  
21 A. I could not quote that.  
22 Q. Not quote. I'm not interested in your  
23 quoting. I'm just interested in knowing whether,  
as  
24 you sit here today, you can give me the specific  
name  
25 of an individual who has written such an article  
or

20286

1 even a specific publication where you've read such  
an  
2 article other than, I've read stuff in the media?  
3 A. I could not give you that specific of an  
4 answer.  
5 Q. Marketing --  
6 MR. ROSENBLATT: That's Line 25, Page  
20.  
7 Q. Let's talk about marketing first. What  
is  
8 marketing in the tobacco industry?  
9 A. Marketing is the advertising and  
promotion of  
10 cigarette products.  
11 MR. ROSENBLATT: Line 16.  
12 Q. Who is your immediate supervisor?

13 A. Andrew Tisch.  
14 Q. How many other people at Lorillard are  
at  
15 your level?  
16 A. Technically, there's no one at my level.  
17 MR. ROSENBLATT: Page 22, Line 1.  
18 Q. Who is?  
19 A. There are other senior managers as  
executive  
20 vice-president. I'm the only executive  
vice-president.  
21 There are others that have comparable positions in  
22 terms of various responsibilities.  
23 Q. Who would they be, please?  
24 A. There's a senior vice-president of  
finance.  
25 Q. What's his name?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20287

1 A. M.A. Peterson.  
2 Q. Who else at that level?  
3 A. There's chief counsel, general counsel,  
4 Arthur Stevens.  
5 Q. Who else at that level?  
6 A. Head lawyer. There's Alex Spears, who  
is --  
7 he has the title of vice-chairman, chief operating  
8 officer. He's essentially responsible for  
operations.  
9 Q. You mean operating the Lorillard Tobacco  
10 Company?  
11 A. No, the operating manufacturing and  
12 production.  
13 Q. Of cigarettes?  
14 A. Yes.  
15 Q. Is he based in New York?  
16 A. No, he's not.  
17 Q. Where is he based?  
18 A. In Greensboro, North Carolina.  
19 Q. Anyone else at the same level?  
20 A. I hope I didn't leave anyone out. No.  
21 Q. Are these people you just mentioned the  
22 senior managers?  
23 A. Yes. That's correct.  
24 MR. ROSENBLATT: Page 24, Line 20.  
25 Q. Have you ever had any kind of discussion  
with

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20288

1 Mr. Spears on the issue of tobacco and health?  
2 A. Yes.  
3 Q. To what extent?  
4 A. General discussion.  
5 Q. Superficial?  
6 A. Pretty much.  
7 MR. ROSENBLATT: And we go to Page 30,  
Line  
8 24.  
9 Q. Are low tar and low nicotine cigarettes

less  
10 dangerous to the health than other cigarettes?  
11 A. As I've said before, I don't think that  
12 there's any relationship to that question. I  
don't  
13 think that's an issue.  
14 Q. You give that answer because you don't  
think  
15 that cigarettes, whether they're low tar and  
nicotine  
16 or high tar and nicotine -- because you don't  
think  
17 that cigarettes, whether they're low tar and  
nicotine  
18 or high tar and nicotine cause disease?  
19 A. That's correct.  
20 Q. But then what's the point of low tar and  
21 nicotine cigarettes, I mean, does that change the  
22 taste, or does it change the pleasure?  
23 A. A lower tar product will have a  
different  
24 taste characteristic than a higher tar product.  
25

MR. ROSENBLATT: Line 21.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20289

1 Q. Are cigarettes addictive?  
2 A. I do not believe they are.  
3 Q. Based on what?  
4 A. My own personal experience.  
5 Q. Anything beyond that?  
6 A. That's about it.  
7 MR. ROSENBLATT: Line 10.  
8 Q. What is the Council for Tobacco  
Research?  
9 A. I believe it's a scientific research  
10 organization.  
11 Q. Have you ever read any of the scientific  
12 research produced by the Council for Tobacco  
Research?  
13 A. No, I have not.  
14 Q. Have you ever had any dealings with the  
15 Council for Tobacco Research?  
16 A. No, I have not.  
17 Q. What is the special projects division of  
the  
18 Council for Tobacco Research?  
19 A. I have no idea.  
20 MR. ROSENBLATT: And we go to Page 36,  
Line  
21 11.  
22 Q. What does research and development at  
23 Lorillard consist of?  
24 A. I'll need more specifics.  
25 Q. You've got a department, what do they  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20290

1 research, what do they develop?  
2 A. They develop cigarette products and do  
3 associated research.

4 Q. Research in the sense of ascertaining  
whether  
5 a particular product will sell well with the  
public?  
6 A. No.  
7 Q. Research along the lines of whether the  
8 product will taste good or give pleasure?  
9 A. They do research related to taste, yes.  
10 Q. Any other kind of research that you're  
aware  
11 of?  
12 A. No.  
13 Q. I mean, for example, is any research  
done on  
14 the issue of whether either cigarette smoking or  
15 environmental tobacco smoke causes or contributes  
to  
16 causing disease?  
17 A. I'm not aware of any.  
18 Q. Do you have any connection with or  
anything  
19 to do with Lorillard Inc. as opposed to Lorillard  
20 Tobacco Company?  
21 A. No, I do not.  
22 Q. Do you have any connection with Loews  
23 Corporation?  
24 A. No, I do not.  
25 Q. Do you ever attend board meetings?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20291  
1 A. No, I do not.  
2 Q. When you were working at any advertising  
3 agencies -- I know you did a lot of media stuff --  
did  
4 you ever have occasion to work with the talent on,  
for  
5 example, on a radio show where a cigarette company  
was  
6 the sponsor?  
7 A. No, I did not.  
8 MR. ROSENBLATT: Page 41, Line 23.  
9 Q. What preparation, if any, did you do for  
the  
10 deposition that you're giving today?  
11 A. I met with some lawyers.  
12 Q. Which ones?  
13 A. Mr. Hardy, Marty Warren and Jim Cherry  
and  
14 Jim Johnson.  
15 Q. Once or more than once?  
16 A. More than once.  
17 Q. How many times?  
18 A. Two or three times.  
19 Q. And how long was each session about?  
20 A. Couple hours.  
21 MR. ROSENBLATT: Page 46, Line 23.  
22 Q. When did it become prohibited for  
tobacco  
23 companies to advertise on radio and television?  
24 A. I believe in 1971.  
25 Q. And what were the circumstances of that?



20292

1 A. Technically?  
2 Q. No, not technically at all.  
3 A. I believe some legislation was passed  
that  
4 prevented the use of broadcast media.  
5 Q. And that was in 1971?  
6 A. I believe so.  
7 Q. And that was federal legislation?  
8 A. I believe so.  
9 MR. ROSENBLATT: What's the next page,  
does  
10 anyone know?  
11 MR. ROSS: 65.  
12 MR. ROSENBLATT: 65, Page 65, Line 4.  
13 Q. What is the Tobacco Institute?  
14 A. It's a trade association.  
15 Q. Have you ever had any dealings with the  
16 Tobacco Institute?  
17 A. Yes, I have.  
18 Q. Tell me about those.  
19 A. I briefly was a part of the  
communications  
20 committee of the Tobacco Institute.  
21 Q. During what time frame?  
22 A. In the years somewhere in the early  
'80s.  
23 Q. And what did you do in that position?  
24 A. I was a part of a group that dealt with  
25 different positions, different communications  
positions

20293

1 as part of the Tobacco Institute.  
2 Q. Does the Tobacco Institute provide  
3 spokespersons when the New York Times or the Wall  
4 Street Journal want a comment from a  
representative of  
5 the tobacco industry?  
6 A. I guess so.  
7 Q. You don't know?  
8 A. Not literally, no.  
9 MR. ROSENBLATT: Page 68, Line 11.  
10 Q. Is it your impression that the  
scientific  
11 community in the United States of America is  
divided on  
12 the issue of cigarette smoking causing cancer and  
other  
13 diseases.  
14 MR. ROSENBLATT: Line 18.  
15 A. I have no idea what the status of the  
16 scientific community is.  
17 Q. You mean that literally, you have no  
idea?  
18 A. I have no idea as to what division of  
the  
19 scientific community there is on the issue.

20 Q. During the past five years --  
21 MR. ROSS: That's out. 23 is out.  
22 MR. ROSENBLATT: Page 69, Line 4.  
23 Q. During the past five years, have you  
read any  
24 article unconnected with the tobacco industry that  
25 states that smoking cigarettes does not cause  
cancer

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20294  
1 and other diseases?  
2 A. I don't recall if I have or haven't.  
3 MR. ROSENBLATT: Going to Line 20.  
4 Q. Does the Council for Tobacco Research  
have a  
5 Scientific Advisory Board to your knowledge?  
6 A. Yes, I believe they do.  
7 Q. Do you know who's on that board?  
8 A. No, I do not.  
9 Q. Do you know the qualifications of any  
people  
10 who are on that board?  
11 A. No, I do not.  
12 MR. ROSENBLATT: Line 12.  
13 Q. How many Americans do you think have  
quit  
14 smoking in the last 10 years?  
15 A. I have no idea.  
16 Q. You don't know if it's three or 30  
million?  
17 A. I have no idea.  
18 MR. ROSENBLATT: Page 72, Line 17.  
19 Q. Do you consider Dr. Spears to be  
20 authoritative on the question of whether cigarette  
21 smoking causes cancer and other diseases?  
22 A. I have no idea how authoritative he is.  
23 Q. Do you consider anyone at Lorillard  
Tobacco  
24 Company to be authoritative on the question of  
whether  
25 cigarette smoking causes any disease?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20295  
1 A. As I said, I'm not familiar with anyone  
who  
2 would have an opinion on that, no.  
3 Q. Do you want to know whether cigarette  
smoking  
4 causes disease or is that information not really  
5 relevant to you at this point in your career?  
6 A. Do I want to know? I have no idea on  
whether  
7 I want to know or I don't want to know. It's not  
a  
8 fact; it's not an issue.  
9 Q. It's not an issue to you?  
10 A. That is correct.  
11 Q. Okay.  
12 A. I might add, since I don't believe that

13 cigarette smoking causes disease, it's not an  
issue.  
14 MR. ROSENBLATT: Page 76, Line 20.  
15 Q. Have you ever met anyone, can you name a  
16 single person that you've ever talked to,  
unconnected  
17 with the tobacco industry, who has stated publicly  
that  
18 cigarette smoking does not cause any disease?  
19 A. I don't think so.  
20 Q. Do you know whether such a statement  
exists  
21 anywhere in the medical literature in the last 10  
22 years, where a doctor or a scientific person has  
23 written down for publication his or her belief  
that  
24 cigarette smoking does not cause any disease?  
25 A. I have no idea.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20296  
1 MR. ROSENBLATT: Page 79, Line 3.  
2 Q. Does Lorillard target women, children or  
3 minority groups in its advertising?  
4 A. No, it does not.  
5 MR. ROSENBLATT: Page 80, Line 21.  
6 Q. Well, is it your belief that tobacco use  
is  
7 not responsible for the premature deaths of less  
than  
8 one-half million people every year in this  
country, or  
9 is it your belief that tobacco use is not  
responsible  
10 for a single premature death?  
11 A. As I said, I do not believe that tobacco  
12 causes disease. Consequently, statistically,  
whatever  
13 you're quoting, I cannot respond to.  
14 Q. Do you believe that a single heavy  
smoker,  
15 two packs a day for 20 years, has ever died from  
lung  
16 cancer as a result of smoking two packs a day for  
20  
17 years?  
18 A. I have no idea. I do not believe it  
causes  
19 disease. Consequently, I have no response to  
that.  
20 MR. ROSENBLATT: Page 85, Line 4.  
21 Q. Have you ever spoken to anyone in the  
tobacco  
22 industry, while you were with RJ Reynolds or now  
with  
23 Lorillard, who stated to you that he or she does  
24 believe cigarette smoking causes disease?  
25 A. I have not encountered anyone like that.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20297

that 1 Q. And as I've understood your testimony,  
2 if you were speaking to a group of children in an  
3 elementary school and you were asked by the  
children if 4 you thought it was a good idea for them to smoke  
when 5 they became 18, your answer would be, that's an  
6 individual decision which you will be qualified to  
make 7 when you turn 18 and it's not for me to tell you  
8 whether you should smoke or not smoke?

9 A. That is correct.

10 Q. Do you think that -- do you think that's  
a 11 responsible position to take, an ethical position  
to 12 take?

13 A. Yes, I do.

14 MR. ROSENBLATT: Page 89, Line 5.

15 Q. To your knowledge is Lorillard doing any  
16 independent research on the issue of whether  
cigarette 17 smoking causes cancer?

18 A. Not to my knowledge.

19 Q. To your knowledge is Lorillard Tobacco  
20 Company doing any independent research on the  
question 21 of whether environmental tobacco smoke causes or  
22 contributes to causing cancer and other diseases?

23 A. Not to my knowledge.

24 Q. To your knowledge is any tobacco company  
25 anywhere in the United States doing such research?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20298

1 A. Not to my knowledge.

2 Q. Will you agree that there are a certain  
3 number of people over the years who are smokers,  
who 4 have desperately wanted to stop smoking but were  
unable 5 to stop smoking, do you agree that there are such  
a 6 category of people?

7 A. I have no idea.

8 Q. Have you ever seen any document put out  
by 9 the Council for Tobacco Research?

10 A. No, I have not.

11 MR. ROSENBLATT: The next page is 97,

Line 3.

12 Q. What would Lorillard do if, for example,  
the 13 state legislature of New York, just to pick one  
state, 14 was considering a ban on smoking in all  
restaurants?

15 How would Lorillard go about fighting that kind of  
16 legislation?

17 A. If Lorillard decided to deal with that  
issue,

18 it would be through the Tobacco Institute.  
19 MR. ROSENBLATT: Page 98, Line 2.  
20 Q. You would agree that generically  
Lorillard,  
21 as well as every other tobacco company, is  
certainly  
22 against the banning of smoking in public  
facilities?  
23 A. Lorillard is in favor of allowing  
smokers and  
24 nonsmokers to have opportunities to exercise their  
25 predilections.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20299

1 MR. ROSENBLATT: Page 99, Line 23.  
2 Q. If legislation was proposed at the  
federal  
3 level to ban all cigarette advertising in all  
magazines  
4 and newspapers, would Lorillard oppose such  
legislation  
5 through the Tobacco Institute or through any other  
6 entity?  
7 A. I believe our position would be that  
anything  
8 that would infringe upon our Constitutional rights  
to  
9 market our products might be an issue that we  
would

10 have some interest in.  
11 MR. ROSENBLATT: Page 101, Line 6.  
12 Q. When you say: We don't believe that  
13 cigarettes cause disease, who is the generic "we"?  
14 A. The company.  
15 Q. Are you briefed in some fashion at  
Lorillard  
16 as to the official position of Lorillard on all  
17 health-related issues such as banning smoking in  
18 buildings?  
19 A. We are made aware of the company's  
viewpoint  
20 on different issues.  
21 Q. Through an inhouse organ?  
22 A. No.  
23 Q. Through what?  
24 A. Through meetings or discussions.  
25 Q. Who attends these meetings?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20300

1 A. It varies.  
2 MR. ROSENBLATT: Page 106, Line 1.  
3 Q. Well, are groups ever targeted such as  
women,  
4 young people, certain racial or ethnic groups?  
5 A. We --  
6 MR. ROSENBLATT: Let me repeat the  
question.  
7 I guess it's hard to play Mr. Orlowsky.  
8 THE WITNESS: I think I'm getting a

cold, is  
9 what's happening here.  
10 MR. ROSS: Obviously, you're being nasty  
to  
11 my client.  
12 MR. ROSENBLATT: Obviously.  
13 Line 1, Page 106.  
14 Q. Well, are groups ever targeted such as  
women,  
15 young people, certain racial or ethnic groups?  
16 A. We don't target per se, but we do look  
for  
17 certain disproportionate segments of the smoker  
18 population that might be more interested in  
certain  
19 types of products, yes. In those terms, yes.  
20 Q. What have you found in that respect? I  
mean,  
21 can you give me an example of a particular kind of  
22 group that would be particularly interested in a  
23 certain kind of product?  
24 A. Certain groups would prefer a product  
that  
25 want a fuller flavor tasting cigarette.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20301  
1 Q. What group did you find would be most  
2 interested in a fuller flavor cigarette?  
3 A. Male smokers.  
4 Q. What do women seem to be most interested  
in?  
5 A. A lighter tasting cigarette.  
6 Q. What about young people as opposed to  
7 middle-aged people?  
8 A. They tend to want -- younger adult  
smokers  
9 tend to be more interested in a fuller flavor-type  
10 cigarette.  
11 MR. ROSENBLATT: Page 107, Line 9.  
12 Q. How do you address the issue in your  
13 advertising of getting new smokers to start  
smoking, to  
14 replace all the smokers who have quit?  
15 A. We do not advertise to nonsmokers.  
16 Q. Are you telling me that all the  
advertising  
17 of Lorillard is for the purpose of getting  
18 already-committed smokers to switch from Marlboro  
or  
19 other lines to your line?  
20 A. That is correct.  
21 Q. And Lorillard has no interest whatsoever  
in  
22 creating new smokers?  
23 A. That is correct.  
24 MR. ROSENBLATT: Page 108, Line 7.  
25 Q. Do you have statistics on how many of  
your  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20302

1 cigarettes are sold to new smokers, people who  
have  
2 never smoked before and begin with a Lorillard  
product,  
3 as opposed to people who have switched from other  
4 brands?  
5 A. No, we do not.  
6 Q. To the best of your knowledge are those  
7 statistic -- those statistics do not exist  
anywhere?  
8 A. That is correct.  
9 MR. ROSENBLATT: Page 109, Line 20.  
10 Q. If I were to get -- collect magazines  
where  
11 Lorillard advertising has appeared in the last 10  
years  
12 and just looked at the people appearing in those  
ads,  
13 would you not think that 80 or 90 percent of the  
people  
14 would be under 40 that appeared in the ads?  
15 A. A large percentage would be under 40,  
yes.  
16 Q. And that's by design, isn't it?  
17 A. Not necessarily.  
18 Q. Well, what are some of the motifs of  
your  
19 advertising for Lorillard?  
20 A. Motifs?  
21 Q. Themes?  
22 A. Well, as I said earlier, we use Newport  
23 Pleasure for Newport.  
24 Q. But what do you show? Do you show two  
people  
25 on a sailboat or what?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20303

1 A. We show two to three to four to ten  
people  
2 engaged in some sort of pleasurable activity.  
3 Q. Like what?  
4 A. Social interaction.  
5 Q. On the beach?  
6 A. Could be.  
7 Q. At a party?  
8 A. Could be.  
9 Q. What's your thinking as to why that's  
10 effective? What are you trying to communicate?  
What  
11 does that have to do with switching from Camel to  
True?  
12 A. Well, it's an alternative. If someone  
feels  
13 that this kind of cigarette product is appealing  
versus  
14 someone from the west, as the cowboy in Marlboro  
15 advertising, or versus whatever else may be  
advertised,  
16 there's a difference there.  
17 MR. ROSENBLATT: What's the next page?

18 MR. ROSS: 122.  
19 MR. ROSENBLATT: Page 122, Line 14.  
20 Q. Does Lorillard ever give out cigarettes  
free  
21 to the public, whether on street corners or at any  
22 other locations?  
23 A. We at times sample product, yes.  
24 Q. And tell me about how you do that, how  
you  
25 sample products.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20304  
1 A. What do you mean how?  
2 Q. How? Do you send a girl, a boy, a group  
of  
3 girls and boys to a street corner and hand out  
4 cigarettes? How do you sample these products?  
5 A. We have various -- we attend various  
6 public-type functions where sampling is allowed,  
and we  
7 have male and female adults that provide product  
to  
8 interested people.  
9 Q. What are some of these public functions  
where  
10 that is done?  
11 A. I can't give you the specific names. I  
don't  
12 recall them. It might be a street festival or  
county  
13 fair or things like that.  
14 Q. In that kind of circumstance, how does  
15 Lorillard make sure that cigarettes aren't being  
handed  
16 out to miners?  
17 A. We have a fairly strict set of  
guidelines for  
18 the people involved in this activity. They're  
19 supervised and they ask for proof. There's a  
20 segregated area, so that you have to make a  
conscious  
21 attempt to participate in the sampling activity.  
We do  
22 as much as we can to ensure that those that are  
not  
23 lawfully eligible to receive product and who are  
not  
24 interested technically in receiving product as  
well do  
25 not get it.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20305  
1 MR. ROSENBLATT: That's it from this  
2 deposition, Judge.  
3 THE COURT: Okay. Now we have to go  
through  
4 another procedure to figure out what's going to  
happen  
5 next.



6 Let me talk to you folks.  
7 Just give us a few minutes.  
8 (Discussion off the record.)  
9 (The following proceedings were had at  
10 sidebar:)  
11 THE COURT: Looking at Engle's Exhibit  
5495,  
12 counsel indicates he wants to read the entire two  
pages  
13 to the jury.  
14 MR. ROSENBLATT: Correct, because what  
15 happens is if I say that I'm going to read  
portions,  
16 then we take up a lot of time with redesignations  
and  
17 that kind of thing. If it's in evidence. And  
18 relatively short.  
19 There are some documents in this pile  
here --  
20 MR. MOSS: We've got a jury there,  
Stanley.  
21 MR. ROSENBLATT: -- where I intend to  
read  
22 briefer excerpts. I'm not suggesting with respect  
to  
23 all of these. Here's another document, since it's  
24 relatively short, that I would want to read the  
whole  
25 thing, since it's two pages.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20306  
1 THE COURT: The question is whether to  
let  
2 them go now or what.  
3 MR. REID: I believe I'd let them go.  
It's  
4 going to be a lengthy discussion.  
5 THE COURT: If I let them go, I don't  
know  
6 whether to bring them back tomorrow.  
7 MR. ROSENBLATT: Probably, it would make  
8 sense, to put aside a good part of the morning to  
go  
9 over depositions. I would think, depending upon what  
you  
10 want to do -- I don't have any preference -- if  
you  
11 were to decide four or five of these I could read,  
I  
12 could take up another 40 minutes.  
13 THE COURT: Let's let the jury go, then  
we  
14 can discuss where we're going.  
15 (The sidebar conference was concluded,  
and  
16 the following proceedings were held in open  
court:)  
17 THE COURT: I guess what we'll do is let  
you  
18 folks go, because we've got a lot of work to do.  
It's

not 19 going to take up more time than we thought. We're  
20 going to be through with a lot of this stuff.  
kind 21 Again, I continually apologize for the  
22 of time delays. There's so much material that we  
have 23 to go over and so little time to do it.  
24 I guess I'll have to get you back here  
at 25 10:00 tomorrow. And we'll take the morning, the  
rest

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20307  
lot 1 of the morning, the attorneys and I, and go over a  
2 of this stuff, hopefully prepare it so we don't  
have 3 too much of an interruption.  
4 We have more depositions to consider and  
some 5 other matters which are going to take some time  
before 6 we can get all that sorted out.  
7 So I guess be patient with us. We'll  
see you 8 tomorrow at 10:00 in the morning.  
9 (The jurors exited the courtroom.)  
Holbrook 10 THE COURT: All right. I read the  
11 material, because it's only a few pages, but I can  
see 12 where there would be argument on it.  
13 MR. ROSS: Mr. Newsom will deal with  
that 14 tomorrow.  
15 THE COURT: There's still the issue of  
the 16 Rosenbaum and Fulford.  
17 MR. ROSENBLATT: And Fulford, of course,  
is 18 video, so I'd have to arrange for --  
19 THE COURT: It's getting overwhelming.  
20 Now, you want to read some of these  
documents 21 into evidence, and that's also discussionable.  
22 So let's hear the opposition.  
23 MR. HEIM: Your Honor, the first problem  
with 24 the documents that counsel presented at sidebar is  
25 that, as I remember them, some of these documents,  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20308  
1 particularly the first one, which is the only one  
2 that's been mentioned so far, were documents that  
Your 3 Honor deferred.  
4 They were -- we talked about whether  
these

5 documents were admissible or not. They were in  
6 connection with Solberg, Mr. Solberg's testimony.  
7 Your Honor will recall Mr. Solberg was  
the  
8 fellow who talked about the AMA and the conspiracy  
9 theory of the tobacco companies with the AMA.  
10 That particular document that counsel  
11 referred to was not admitted into evidence. You  
had  
12 deferred on that. And I had told Your Honor  
earlier  
13 this week that I intended to make a motion on  
Friday to  
14 strike Mr. Solberg's testimony in its entirety.  
15 THE COURT: What was the number of that  
16 document again?  
17 MR. ROSENBLATT: Mr. Heim is just wrong  
about  
18 that.  
19 THE COURT: What's the number?  
20 MR. ROSENBLATT: This document was  
admitted,  
21 5495. 100 percent it was admitted.  
22 MR. HEIM: Maybe I'm wrong.  
23 MR. ROSENBLATT: I checked the  
transcript,  
24 because I thought you had said that. And this was  
25 admitted during the course of his testimony.  
5495.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20309  
1 MR. HEIM: Well, maybe our chart is  
wrong.  
2 On our chart we have it as deferred. So I guess  
I'd  
3 have to go back and look.  
4 MR. ROSENBLATT: The transcript itself  
of  
5 Mr. Solberg, which I do not have with me, but I  
can  
6 represent to the Court that looking at the  
transcript  
7 of Solberg, 5495 was admitted into evidence.  
8 MR. HEIM: See what Your Honor's records  
are  
9 on this.  
10 But whatever they are, the point here is  
that  
11 on these Solberg documents, in the brief  
discussion we  
12 had, my recollection of what Your Honor said was  
we  
13 need to think about this. If there is a problem  
with  
14 Solberg's testimony, once you heard it in terms of  
15 whether it is anything more than an inference on  
an  
16 inference, why make it worse by overlaying a bunch  
of  
17 documents on this subject on top of it.  
18 And as I said, when I came into Court on

19 Tuesday, I wanted to move to strike Solberg's  
testimony  
20 and to argue that, but I put it back to Friday so  
that  
21 we wouldn't delay the jury.  
22 So why start with a Solberg document if  
23 that's going to be the subject of a motion to  
strike  
24 which Your Honor will hear?  
25 If you're going to read documents, I  
would

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20310  
1 urge that we read some other kind of documents  
that are  
2 not the subject of a motion to strike. Because I  
don't  
3 think the Solberg testimony is admissible  
testimony  
4 anyway.  
5 THE COURT: Ms. Clerk, what's your --  
6 THE CLERK: I am checking, Your Honor,  
5495.  
7 THE COURT: Is what?  
8 THE CLERK: I'm checking.  
9 MR. ROSENBLATT: It was during Solberg's  
10 actual testimony.  
11 MR. REID: My records show it wasn't  
admitted  
12 either. It was not. And I've got the page cite  
which  
13 I could go and look up.  
14 This raises sort of a different  
procedural  
15 problem. We have the procedure for designation,  
and  
16 part of the reason for that is if they want to  
read  
17 part of the document, give us a chance to see if  
18 there's a crossdesignation.  
19 It's also a problem, if we're seeing the  
very  
20 first document, they want to read the whole  
document,  
21 because Mr. Rosenblatt said: We want to read  
22 documents; we went sidebar; he still hasn't given  
us a  
23 list. He has them in a pile, but for whatever  
reason,  
24 he chooses not to give us a list.  
25 The reason for looking at the documents  
ahead

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20311  
1 of time is to find and resolve some of these  
issues;  
2 the reason that you put that in the pretrial  
order,  
3 both for partial documents and full documents.

4 But there's a bigger problem that Mr.  
Moss  
5 wants to talk about.  
6 MR. HEIM: I believe I'm mistaken. I've  
been  
7 handed --  
8 THE COURT: You are. The clerk has  
given me  
9 a copy of 5495.  
10 MR. HEIM: I was just handed a copy of  
the  
11 transcript at Page 10391. It's a little  
confusing,  
12 because I say no objection to two other documents,  
and  
13 then the record says three are admitted. But it  
does  
14 say 5495 was admitted.  
15 THE COURT: Okay. I think Mr. Moss has  
got a  
16 more esoteric argument.  
17 MR. MOSS: I hope it's not entirely  
esoteric.  
18 I mean it to be fairly practical.  
19 And that is this whole concept of  
publishing  
20 documents to the jury that are already in evidence  
at  
21 any time other than during closing argument.  
22 Once again, I know this is an unusual  
case,  
23 but it's not -- this part of it is not that  
unusual.  
24 We have a lot of cases where there are a lot of  
25 documents in. We tried a whole bunch of them and  
the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20312  
1 court has never taken the time, other than perhaps  
if  
2 there's a witness there and there's something of  
3 interest in that particular document, to allow  
either  
4 side to sit there and simply read -- that's what  
5 closing arguments are about, if you want to use  
your  
6 time, however you want to do it. The jury is  
going to  
7 get that document.  
8 You can do it in a number of ways. You  
can  
9 read it to them or tell them: Pay particular  
attention  
10 to this, this and this.  
11 But we're here now, and if Your Honor  
12 remembers the Broin trial, we got to a point in  
the  
13 Broin trial where we basically were in a holding  
14 pattern. And he certainly has a right to put in  
15 whatever depositions that he desires, and whatever  
16 depositions that Your Honor rules, if we have an

17 objection, what portions are admissible.  
18 I mean, I think there could have been a  
way  
19 to streamline all this, but we didn't do it and  
we're  
20 here. So Your Honor is burdened with taking this  
stuff  
21 home at night and we're burdened with the jury  
marching  
22 in and out. I guess we're in the home stretch  
now, but  
23 there really is, I perceive, a significant problem  
in  
24 this publication of documents to a jury.  
25 You know, I know what they do in other  
courts

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20313  
1 is not binding on this Court, or even perhaps even  
2 persuasive, but I happened to be looking at a  
3 transcript of a case that's being tried right now,  
4 tobacco case in San Francisco. And one of the  
lawyers  
5 attempted to publish a document that was put in  
after  
6 the witness left. And, of course, what the judge  
said  
7 is: Whoa, that's for closing argument.  
8 I'll bring you that transcript, if you  
want  
9 to see it.  
10 THE COURT: I'll take your word for it.  
I  
11 basically agree with you. The general experience  
that  
12 we have in these courts, as we practice, is that  
if a  
13 witness is on a stand and a document is sought to  
be  
14 introduced, and that document is going to be the  
15 subject matter of some interrogation, and, yes,  
for the  
16 purpose of the jury understanding what the issues  
are,  
17 yes, you can publish the document at that time and  
that  
18 makes sense to do it at that point.  
19 We published some documents here before.  
20 That was an accommodation because we sort of ran  
out of  
21 witnesses and had some time.  
22 MR. MOSS: Yes. And that's at the time  
I  
23 said: Your Honor, you ought to be thinking about  
it,  
24 and let's take it up when we come back from  
Christmas  
25 or New Year's.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20314  
that  
to  
of  
general  
witness  
not  
stand  
problem for  
that  
a  
fact  
on  
closing,  
whole  
one  
privilege  
documents

1 THE COURT: And the Court appreciates  
2 and I think everybody did. But now if we're going  
3 get into this, and I see we've got reams and reams  
4 these documents, to say on one hand that the  
5 rule is you read the document when you have the  
6 here so you can interrogate the witness on the  
7 document, that makes sense.  
8 On the other hand, to say let's wait and  
9 publish any of these until closing argument, then  
10 you've got a closing argument which all you do is  
11 up there and read documents. That's also a  
12 whoever has to do it and listen to it.  
13 MR. MOSS: Well, that's a trial strategy  
14 each lawyer needs to make.  
15 THE COURT: I understand.  
16 MR. MOSS: You just can't accommodate --  
17 trial court, I suggest, shouldn't accommodate the  
18 that somebody wants to do it. Then use your time  
19 closing if you want to. I promise you, on  
20 Stanley won't be up there reading documents the  
21 time.  
22 THE COURT: No, I understand that. See,  
23 of the problems was basically that we started with  
24 these documents. There were objections for  
25 and all sorts of things. So a lot of the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20315  
yet.  
that  
documents  
there  
get  
we

1 were deferred and we haven't really ruled on them  
2 So we couldn't really get to that document with  
3 witness.  
4 On the other hand, a lot of these  
5 relate to witness' deposition testimony, and you  
6 couldn't come back and reconstruct.  
7 MR. MOSS: I understand. Of course,  
8 are two aspects to that. Number one, we tried to  
9 this done before, and for a whole bunch of reasons  
10 didn't, suffice it to say.

11                   The other part of it is, Judge, I think,  
and  
12   I know Your Honor is very mindful of, we've got a  
jury  
13   here, that we really have an obligation to move  
this  
14   case with as much dispatch as we can. I mean,  
they're  
15   coming in and out of here. The last three weeks I  
16   don't know what they're thinking about what we're  
up  
17   to, and I'm sure they think we work, but allowing  
this  
18   publication simply compounds what already, and at  
least  
19   my perception, is a problem.  
20                   The defendants need to get on with their  
case  
21   too. We've been asking when, you know, because  
we've  
22   got witnesses that we've got, and so far we've had  
a  
23   bunch of estimates and none of them have been  
right  
24   yet. And I really think the time has kind of  
come:  
25   When are you going to bring it to a close?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20316  
1                   And I think that by not allowing the  
2   publication, or as Your Honor is inclined, from  
hearing  
3   how you said to do it, then at least being quite  
4   restrictive when it's done, then we can find out  
when  
5   it is that we can plan on putting on our case.  
All of  
6   this is, I think, a big picture item.  
7                   THE COURT: I think the main stumbling  
block  
8   we're running into are these depositions, because  
9   regardless of whether I take them home at night  
and  
10   review them, we still have to review them the next  
day  
11   or some time. And that interferes with the  
presence of  
12   the jury.  
13                   I don't know of any other way of doing  
it  
14   except pretrial, and it's too late for that.  
We're  
15   stuck with that procedure and some of them are not  
that  
16   easy.  
17                   We're getting to the point now where  
some of  
18   the decisions become hard to make because of the  
19   overall effect of prior depositions and the types  
of  
20   questions that you can't change, because a



deposition

21 can't be changed in the sense of fitting it in and  
22 tailoring it to the situation that we do have. It  
gets  
23 very difficult. A lot of stuff probably would not  
be  
24 asked if the witness were on the witness stand at  
this  
25 point.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20317

1 I wish I could speed up or figure out  
some  
2 way to do the depositions so we wouldn't have to  
waste  
3 that time. I agree, to sit there and read three,  
four  
4 different pages of a particular document, document  
5 after document, was not really my intent in the  
first  
6 place either.  
7 MR. ROSENBLATT: To put this in  
perspective,  
8 first of all, to get very basic, Mr. Moss is  
acting as  
9 though the concept of publishing documents to a  
jury is  
10 unusual, that it's an alien concept.  
11 It is not. I have been in many, many  
trials  
12 and in run-of-the-mill cases where it's in  
evidence,  
13 the trial lawyer has the option. You do it with a  
14 witness. And quite frankly, one of the reasons  
15 tactically that I did not want to go through  
documents  
16 with witnesses when I had that option was, from my  
17 standpoint, they were eminently successful,  
because of  
18 their sidebars, in chopping up the testimony as it  
was.  
19 And from my standpoint, I start with a document,  
well,  
20 it's going to be totally chopped up. So, yes, I  
made  
21 the choice in certain instances. It's in  
evidence. At  
22 a given point in time, I will read it to the jury.  
23 Now, in terms of the documents that are  
24 ultimately going to be introduced, I'm not  
suggesting  
25 publishing more than five percent of them. And  
Your

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20318

1 Honor has said in many, many occasions -- how  
divorced  
2 from reality can we become? As Your Honor has  
noted

case, 3 and said on several occasions, at the end of the  
4 we're going to give the jury stacks and stacks of  
5 documents. On what fantasy assumption? That  
they're 6 going to go through them? That they're going to  
go 7 through the documents without direction, without  
my 8 being able to say in final argument -- in fact, it  
will 9 shorten the final argument in a way: Remember, I  
read 10 the whole document to you. It was published to  
you on 11 such and such a date, but here's a point I want to  
12 emphasize and put up on a board, or something like  
13 that.

14 And when Mr. Moss brought this up a  
while ago 15 and made pretty much the same argument he's making  
16 today, Your Honor took the position, you know, it  
can 17 get out of hand, but it's not out of hand yet;  
it's not 18 approaching getting out of hand. I haven't said  
give 19 me a week to read documents or anything of the  
kind. 20

And in terms of, you know, talking about  
the 21 jury and everything like that, I would remind the  
22 Court, I don't think there was ever, with about 30  
23 witnesses that we put on, that there was ever  
really 24 that I came to the court with a problem and said,  
you 25 know: The guy, he had a problem with the  
airplane.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20319  
1 Hardly ever a story. I mean, you were ready for a  
2 witness, we had a witness. So, you know, we've  
moved 3 it.  
4 Now, I think as a practical matter what  
we 5 may -- and I certainly -- I don't like the  
situation 6 and I think it's unavoidable. I don't think it  
could 7 have been pre-tried. I think that was a fantasy,  
that 8 you could pre-try a case of this magnitude and  
decide, 9 before Your Honor ever heard the first witness,  
what 10 was going to be allowable from these depositions.  
11 I think the process is infinitely faster  
now; 12 that you're in a position to say: Well, this is

13       repetitious; this was done. And Your Honor has  
14       obviously developed a pattern. Your rulings are  
15       consistent. We know what to expect in the  
depositions.  
16               But, okay, I mean, that's in the past.  
And I  
17       think that it would probably make sense at some  
point  
18       next week to maybe take a day, day and a half,  
without  
19       the jury, and explain to them and say: This is  
really  
20       going to shorten the process. And at that point  
spend  
21       a day, two days, going over all the depositions so  
that  
22       when the jury comes back, boom, they're here from  
9:30  
23       to 5:00, and all we do is read depositions. I  
don't  
24       expect to have any more live witnesses.  
25               But because of the nature of the defense  
and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20320  
1       the technical approach of the defense, you know,  
2       they're going to try to point to any deficiency.  
You  
3       know, we need to get this stuff into the record.  
And  
4       it's not ideal, but I really think it's  
unavoidable. I  
5       think considering other tobacco cases and the  
mounds  
6       and mounds and mounds of documents, I mean, I  
think  
7       we're moving pretty expeditiously, although it's  
an  
8       annoying process. I'm the first to admit that.  
It's  
9       annoying to me, but I'm not aware of any  
alternative.  
10              THE COURT: Right now what's annoying me  
is  
11       the deposition, having to go through them all, and  
then  
12       take the time to decide which is which. I have  
these  
13       two, which I have tentatively gone over. I still  
have  
14       a problem with it; we're going to have to discuss  
it.  
15       Maybe we can do that now, at least give us  
something to  
16       do tomorrow. Rather than do documents on, say, a  
17       Friday, we could do the depositions. I don't  
think  
18       that's a problem.  
19              Maybe that would be good, because when  
we  
20       finish with the depositions, then we could take up

the  
off,  
documents.  
I would like to finish the depos first.  
MR. ROSENBLATT: That's fine with us.  
And I  
think it makes sense to do it that way.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20321  
1 I mean, basically, Mr. Reid says I've  
had a  
2 stack of documents and for some mysterious reason  
I  
3 chose not to tell them. First of all, no one  
asked me  
4 to tell them; but, secondly, from my standpoint,  
Judge,  
5 this was a back-up. If we reached a point, I  
wanted to  
6 be in a position to say: Well, Judge, to fill the  
7 time, I've got a few documents that are in  
evidence  
8 that I'm happy to read. It was no mystery. It  
was  
9 that straightforward.  
10 MR. MOSS: And that was the context that  
I  
11 raised this issue, because I knew that we needed  
to do  
12 something. And Your Honor, I think, said that a  
moment  
13 ago; that that was a little different, because at  
that  
14 point we had a jury here. We really had nothing  
to do.  
15 And that's when I said: Well, Judge, we're not --  
but  
16 as to this Friday, we don't have any problem of  
doing  
17 the depositions and not doing the documents, but I  
do  
18 want to remind the Court that we intend to argue  
the  
19 motions that we told you about early in the week.  
20 THE COURT: We can do that, too.  
21 MR. MOSS: I understand we're not going  
to do  
22 documents. The only reason I ask that is Doc  
Schneider  
23 was going to come down, and I'm going to tell him  
not  
24 to do the documents on Friday.  
25 THE COURT: He's not in town?  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20322  
1 MR. MOSS: No.  
2 THE COURT: Let's try to get the depos

out of  
for  
know  
extensive.  
time,  
remember,  
testify at  
Houston.  
back  
not  
were  
admissible,  
documents  
in  
Where  
back

3 the way. I know that they're a lot of extra work  
4 me, too, because I've got these two and I don't  
5 how many more you mentioned, four or five more.  
6 MR. ROSENBLATT: And as you can see,  
7 Holbrook, our designations are not nearly as  
8 It just occurs to me, when we're talking about  
9 just take Eric Solberg as a witness. You  
10 Judge, he was here at one time; they argued very  
11 vigorously that he shouldn't be permitted to  
12 all; we went through all that. He returned to  
13 They took his deposition, and then when he came  
14 the second time, they argued again that he should  
15 be permitted to testify. Your Honor heard their  
16 arguments; you made a ruling; he testified; there  
17 sidebars; you made rulings: This is not  
18 this is admissible. He testified. Certain  
19 were introduced through him.  
20 I have never been in a situation where  
21 that kind of scenario, a witness testifies over  
22 objection, and we're now hearing: Well, you know,  
23 Judge, we were unsuccessful in persuading you, or,  
24 Judge, you were wrong -- where does this end?  
25 does this circle end? Two times they kicked him

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20323  
deposition;  
Your  
wanted  
to.  
motion to  
under  
offense,  
week, I'm

1 to Houston. He comes back; they take a  
2 they say: Don't let him testify the second time.  
3 Honor lets him testify; not all the evidence I  
4 to get in. He testified to whatever he testified  
5 Now we're hearing that we're going to hear a  
6 strike his testimony. And my response to that is  
7 that's what's taking so long, all this time.  
8 MR. HEIM: I know this fits very neatly  
9 the category that the best defense is a good  
10 so I'm going to treat it that way. But I remember  
11 earlier in this -- no, it wasn't earlier this  
12 sorry. It was last Friday when the subject of the

13 Solberg documents came up en masse, and Your Honor  
14 raised the issue saying: Now that I have heard  
what  
15 Solberg said, I am troubled by it. I need to  
think  
16 about it.  
17 And I made the comment that now that  
we've  
18 heard what he had to say, his testimony did not  
support  
19 an inference that it was proper to support. And  
that's  
20 why it should be stricken, that I would so move,  
and  
21 Your Honor said we would take that up at some  
other  
22 time.  
23 That's all I'm going to say about Mr.  
Solberg  
24 at this point.  
25 I don't want it to get lost in the  
shuffle,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20324  
1 however, that plaintiffs' brief, in opposition to  
the  
2 motion that we've had pending for three or four  
weeks  
3 with regard to youth marketing, which they were  
going  
4 to file on Tuesday, is supposed to be filed,  
quote,  
5 "some time this week," unquote.  
6 And I assume we're still on schedule for  
7 that, because whether or not we argue it on Friday  
or  
8 not, when this subject came up and we talked about  
it,  
9 counsel said: Well, we want a full opportunity to  
10 brief this issue. And I said, I agree; I want  
them to  
11 have a full opportunity to brief it.  
12 And Your Honor said we would have  
argument  
13 after it had been briefed.  
14 So I'm expecting that that brief will be  
15 filed this week. And if it is and it's ready, we  
16 certainly would want to argue that as well on  
Friday.  
17 THE COURT: Well, we can take up  
whatever we  
18 can. There's only so many hours in a day.  
19 MR. HEIM: Well, that's true.  
20 THE COURT: We'll do what we can do.  
21 MR. HEIM: If that's not ready for  
argument  
22 on Friday, it can be put back, but I don't want it  
to  
23 be lost.  
24 THE COURT: Let's try. Since I've  
already

and 25 gotten two depositions I've gone through already,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20325

up 1 I've got two more to do tonight, that will take us

2 to Thursday. But whatever depositions after that.

Friday. 3 MR. HEIM: We'll take those up on

4 MR. ROSENBLATT: Hopefully, if we devote

5 Friday, we could get through all the depos.

going 6 MR. MOSS: The note I have from someone

7 behind me is: Can we find out what depos we're

that 8 to do on Friday? There's nothing esoteric about

9 one.

10 THE COURT: Depending how quickly we get

11 through this stuff.

that 12 You mentioned the names of those depos

13 you wanted.

when I 14 MR. ROSENBLATT: I mentioned a bunch

15 had a list in front of me. Kelly has it. Dr.

Houston.

16 MS. LUTHER: Arthur J. Stevens,

Holbrook,

17 Spears, McAllister, Kornegay, Horrigan and

Houston.

we've 18 MR. ROSENBLATT: And then I said that

19 also got under discussion --

20 THE COURT: Have those depositions been

21 color-coded?

even 22 MR. ROSS: I don't know, Judge. I don't

23 have Stevens here in the courtroom today.

we'll 24 MR. REID: I can tell you on Horrigan,

just 25 file tomorrow our usual paper that we file. We

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20326

designations 1 got new designations and it's like 200 some pages.

2 COUNSEL: We also got additional

3 on Dr. McAllister.

can 4 THE COURT: Moving along as fast as we

5 go.

whole 6 MR. ROSENBLATT: We've gotten through a

7 bunch of depositions.

8 MR. MARTINEZ: We'll have Kornegay

and 9 color-coded tomorrow with our usual objections,

10 maybe you could give your usual rulings.

11 THE COURT: All right. Usual rulings

apply,  
12 so we don't have to worry about it.  
13 Do you want to talk about Rosenbaum?  
14 MS. LUTHER: Sure.  
15 THE COURT: Let's see if we can get  
through  
16 that anyway.  
17 We have never really talked about it.  
If  
18 there's something that we get to that you really  
want  
19 to bring to my attention about any of this, do so.  
20 MS. LUTHER: I will.  
21 MR. ROSENBLATT: Let me find that depo,  
22 Judge.  
23 MS. LUTHER: Just for starters, the  
amended  
24 designations that I gave Your Honor today, there  
is a  
25 counterdesignation that wasn't previously  
designated.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20327  
1 THE COURT: Give me a page.  
2 MS. LUTHER: Page 4, Line 23 through 25.  
3 THE COURT: I have a little mark on  
that,  
4 pencil mark, or something pointing down.  
5 MS. LUTHER: Could I see it?  
6 Through Line 2, okay.  
7 THE COURT: You just let me know what  
you  
8 want me to look at while we go. Obviously,  
somebody  
9 picked it up.  
10 Are you ready?  
11 MR. ROSENBLATT: On Rosenbaum?  
12 THE COURT: Yes.  
13 MR. ROSENBLATT: Yes.  
14 MS. LUTHER: I think the first objection  
we  
15 have, Stanley, is one of yours to  
counterdesignations.  
16 THE COURT: Do you want to just go  
through  
17 counterdesignations or objections, rather than go  
18 through the whole thing? Would that be better?  
Or do  
19 we need it?  
20 Page 3, Line 7 through 25, without  
21 opposition.  
22 Lines 1 through 7, without opposition.  
23 Counterdesignation on the bottom of Page  
4,  
24 Lines 23 through 25, and on top of Page 5, Lines 1  
and  
25 2, will be permitted.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20328



1 Skip to Page 14.  
2 MR. ROSENBLATT: 14?  
3 MS. LUTHER: Right.  
4 THE COURT: No opposition to the entire  
page,  
5 Lines 1 through 25.  
6 MS. LUTHER: Actually, it's 2 through  
25,  
7 Judge.  
8 THE COURT: Well, 2 through 25, okay.  
9 That gets skipped to Page 20.  
10 MR. ROSENBLATT: 20?  
11 MS. LUTHER: Right.  
12 THE COURT: No opposition on Lines 17  
through  
13 25, and on Page 21, Lines 1 through 10.  
14 MS. LUTHER: Correct. Then plaintiff  
15 withdrew Lines 11 through 25 of their designation.  
16 THE COURT: Wait a minute. I don't have  
17 anything marked anywhere.  
18 MR. REID: Yours is marked correctly.  
19 THE COURT: So I don't have anything  
else to  
20 worry about then.  
21 MR. REID: Page 28, I think, is the next  
one.  
22 THE COURT: That takes us to Page 28.  
23 MR. REID: And we have an objection  
there.  
24 It's an expert opinion.  
25 THE COURT: I've been allowing those  
kinds of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20329

1 questions in on people who are connected with the  
2 industry.  
3 MS. LUTHER: That's an interesting  
point,  
4 Judge, because Mr. Rosenbaum isn't connected with  
the  
5 industry.  
6 THE COURT: What is he?  
7 MS. LUTHER: He's a director and CEO of  
The  
8 Brooke Group, the holding company.  
9 MR. ROSENBLATT: But LeBow testified  
that  
10 they own it 100 percent. They can hire, they can  
fire,  
11 the CEO. Brooke is the parent.  
12 MS. LUTHER: Rosenbaum's testimony makes  
it  
13 apparent that he has no involvement whatsoever  
with  
14 Liggett.  
15 MR. ROSENBLATT: Well, is it credible  
for  
16 this man, who sits on a board of the parent  
company of  
17 a tobacco company -- you ask him this question.  
He

18 says: I don't have a clue. The jury can infer  
that's 19 just a ridiculous answer. And it is a ridiculous  
20 answer: I don't have a clue.  
21 It shows he doesn't care; that it goes  
back 22 to, you know, LeBow's testimony in his first  
23 deposition: I'm a bottom-line guy. I don't worry  
24 about it. I don't care if it causes cancer.  
25 It hooks in, Judge.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20330  
1 MR. REID: Your Honor, his argument  
makes the 2 point, and it's highly prejudicial to ask these  
3 straw men sort of questions.  
4 MR. ROSENBLATT: Not prejudicial at all  
if 5 they give an intelligent, honest answer.  
6 THE COURT: Well, that is open to  
question, 7 too. I can understand he's the parent, Brooke.  
They 8 do a lot of other stuff.  
9 Okay. I'll go along and sustain the  
10 objection.  
11 Page 29, again he says: I'm not expert.  
I 12 don't know.  
13 MR. REID: Same objection.  
14 THE COURT: If I did that one, I'll have  
to 15 do this one. Sustain 17 through 21.  
16 Switch to Page 37. I marked that page  
out. 17 So sustain the objection on Page 37.  
18 38, then we get one of those other  
questions 19 about addiction.  
20 MR. REID: Same basis. Our argument  
would be 21 the same, just addiction instead of causation.  
22 THE COURT: Yes, but he's got reasons  
here. 23 MR. ROSENBLATT: Well, but if you're not  
24 going to allow causation --  
25 THE COURT: Depends who we're talking to  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20331  
1 here.  
2 MR. REID: He's talking about as a lay  
3 person, who has no connection at all or no basis  
for 4 it, which would be the same fundamental basis as  
the 5 previous ruling.  
6 MR. ROSENBLATT: Here he has an opinion.  
7 MR. REID: But it's not a permitted  
opinion.

8 I mean, lots of people have opinions.  
9 THE COURT: I stepped into quick sand  
and I'm  
10 up to my chest. I'm sinking rapidly. And I'm  
going to  
11 have to be consistent. 38, sustained.  
12 Which takes us to 39, also sustained.  
13 40, up to Line 11 and through 23, just  
get  
14 rid of the whole section.  
15 Page 42, 17 through 25, sustained.  
16 43, Lines 1 through 3, and Line 7  
through 9,  
17 sustained.  
18 Page 46, Lines 10 through 22, without  
19 objection.  
20 MR. REID: Go to 74.  
21 THE COURT: Switch to 74.  
22 MR. ROSENBLATT: Page 74?  
23 THE COURT: Yes. There's nothing in  
between.  
24 This is the doctor question. He doesn't know.  
25 MR. ROSENBLATT: Neither does anyone  
else;

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20332  
1 that's the point.  
2 THE COURT: The point is, is that his  
job to  
3 know? See, if it isn't his job to know that, then  
what  
4 difference does it make whether he knows or  
doesn't  
5 know?  
6 MR. ROSENBLATT: Because it's the most  
7 obvious. You could be in the tobacco industry for  
five  
8 minutes and the first question that would occur to  
you  
9 is, okay, there's a dispute. Who's on our side?  
Who's  
10 on our side?  
11 The answer is nobody or I don't know.  
12 THE COURT: I might be the CEO of Brooke  
and  
13 leave everything else to Liggett.  
14 MS. LUTHER: He's a director of Brooke,  
15 Judge. He's not the CEO.  
16 THE COURT: I'm saying he's a different  
17 category. He's doing whatever Brooke does, and  
I'm not  
18 going to have anything to do with tobacco.  
19 MS. LUTHER: I can't find it in here,  
Judge,  
20 but he testifies that his involvement with Brooke  
has  
21 to do with a trading card company. That's his  
22 involvement with Brooke.  
23 THE COURT: A trading card company?  
24 MS. LUTHER: Baseball cards, things like  
25 that. And he even offers to get cards for all of

the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20333

1 attorneys and their children at the deposition.  
2 THE COURT: See, the question on Page 4,  
Line 3 23: What is your connection with Liggett? And he  
4 says, on the top of Page 5: I personally don't  
have 5 any connection.  
6 MS. LUTHER: Exactly.  
7 MR. ROSENBLATT: That doesn't prevent  
him 8 from gaining information.  
9 Judge, I could care less about this  
question 10 at this point. And you've excluded so much that  
-- 11 THE COURT: But I don't think he's the  
right 12 guy. So sustain on 16 through 23 on Page 74.  
13 Page 75, I guess he knows what a trade  
14 organization is. No opposition anyway.  
15 Page 76, no opposition.  
16 MR. REID: Go to 87 next.  
17 THE COURT: Page 87, no opposition,  
Lines 14 18 through 25.  
19 MS. LUTHER: Actually, that's a  
20 crossdesignation.  
21 THE COURT: What is?  
22 MS. LUTHER: It's plaintiffs'  
23 crossdesignation.  
24 THE COURT: Plaintiffs'  
crossdesignation?  
25 MS. LUTHER: That's what I have it as.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20334

1 THE COURT: I have it just yellow.  
2 MR. REID: I have objections to it.  
3 MS. LUTHER: Page 86, Line 14.  
4 MR. REID: No objection to that.  
5 THE COURT: Wait a minute. Does that  
relate 6 to 87?  
7 MS. LUTHER: 88, Line 4 is a plaintiff  
8 crossdesignation. And I objected to it on the  
basis 9 that it's not really crossdesignation, because it  
10 doesn't relate to any designation made by any of  
the 11 defendants. It's not redirect.  
12 THE COURT: Well, maybe he changed his  
mind 13 and wants it on direct.  
14 MR. ROSENBLATT: Yes, I want it in.  
15 MR. REID: May I find out what exactly  
we're 16 talking about?

17 THE COURT: Page 86, Line 14.  
18 MR. REID: There was no objection on our  
part  
19 on 86, 14 to 25.  
20 THE COURT: Right. I don't see anything  
21 here. Plaintiff wants it in. I don't know if  
anybody  
22 has an objection.  
23 MS. LUTHER: I'm objecting.  
24 THE COURT: What's the objection?  
25 MS. LUTHER: A, what I just mentioned,  
and B,  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20335  
1 I think as far as 14 through 25 goes, I don't have  
a  
2 problem with that, but as far as 87 through --  
3 THE COURT: Let's talk about 86.  
4 MR. REID: I do have objection to 87.  
5 THE COURT: Page 86, Line 14 through 25,  
6 overrule any objection.  
7 Now, Page 87.  
8 MR. REID: Our objection there is that  
this  
9 was just asked and answered on Page 86, Line 14  
through  
10 25.  
11 MR. ROSENBLATT: It's not repetitive at  
all.  
12 MS. LUTHER: It's repetitive and  
13 argumentative.  
14 MR. ROSENBLATT: 87 is the board of  
directors  
15 of the parent company of Liggett. That's the  
bottom  
16 line of all of them: It's a legal product. We  
don't  
17 care if it kills people; it's a legal product.  
18 He doesn't say that, but that's why I  
want it  
19 in, because that's his true attitude. And that's  
what  
20 LeBow said on his first deposition in '93.  
21 THE COURT: Okay. Overrule the  
objection,  
22 Page 87, and the top of 88, Lines 1 through 4.  
23 Now we go to Page 100. What difference  
does  
24 it make where LeBow spends his time?  
25 MR. REID: That's our objection.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20336  
1 MS. LUTHER: And LeBow has already  
testified  
2 to it.  
3 MR. ROSENBLATT: I don't care.  
4 THE COURT: Good, because I already  
marked it  
5 out.

6 MR. REID: 114 is next.  
7 THE COURT: Now we go to 114. I've got  
all  
8 kinds of different color codes here.  
9 MS. LUTHER: It's objected to.  
10 MR. REID: Secondhand hearsay, his  
argument  
11 about what somebody thinks about something.  
12 MR. ROSENBLATT: Here he's a very  
13 knowledgeable guy all of a sudden.  
14 MR. REID: It's Mr. Rosenblatt in his  
15 question. The question contains hearsay.  
Certainly  
16 facts that aren't in evidence.  
17 THE COURT: He agrees. He says that's  
their  
18 position. I let it in.  
19 Also, the counterdesignation on Page  
115,  
20 Lines 13 through 25, and 116, 1 through 8.  
21 Page 117.  
22 MR. REID: We object to the rest of it.  
It's  
23 outrageous.  
24 THE COURT: I excluded 12 to 14, 17 to  
25;  
25 Page 118, Lines 1 through 13, and Lines 21 through  
25.  
  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED  
  
20337  
119. 1 I don't know. I can't read the top of  
rest 2 MS. LUTHER: It's a continuation. The  
3 of the deposition is all about that line of  
4 questioning.  
5 THE COURT: Well, I excluded it all.  
6 Okay. So I guess that's it, then.  
7 Well, we can do this one tomorrow. It's  
not  
8 going to take a long time.  
9 MR. ROSENBLATT: Not going to take a  
very  
10 long time.  
11 THE COURT: Do you want to try Fulford?  
12 MS. LUTHER: Sure.  
13 MR. ROSENBLATT: I'd rather come in  
early.  
14 You've got the jury coming in at 10:00. My  
preference  
15 would be to come in early, like quarter to 9:00.  
16 THE COURT: So I've already looked at  
17 Fulford. I've gone through -- I really have read  
those  
18 pages, 151 to 168, or whatever it is, of Holbrook.  
19 Do you want to discuss that issue?  
Who's  
20 doing Holbrook?  
21 MR. ROSS: I could do it if I had the  
22 deposition. I don't have it. Mr. Newsom was  
going to

23 do it tomorrow. Oh, I have read it also.  
24 THE COURT: Well, the essence of the  
thing  
25 is -- if I'm reading the right deposition; let me  
just

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20338

1 double-check -- this is the one where he severely  
2 criticizes the tobacco industry as being  
obstructionist  
3 and not truthful and everything else. But there  
isn't  
4 any solid fact mentioned as to what it is he's  
talking  
5 about.  
6 He says: They made some false  
statements and  
7 false accusations, took things out of context and  
done  
8 so during depositions and done so during the time  
that  
9 I was working with the Surgeon Generals, and  
everything  
10 they do, they nitpick and lie here and there, and  
11 giving false impressions as to the meaning, even  
though  
12 what they say may not be by its very nature  
untrue, and  
13 the implication may be that that's the pattern.  
14 The problem is, that would be all well  
and  
15 good, if we had some example of what he was  
talking  
16 about.  
17 MR. ROSENBLATT: We do, from the other  
18 testimony. The pattern. The jury has now heard  
the  
19 pattern from the CEOs. It's obvious what he's  
talking  
20 about. They say there's a scientific controversy,  
21 nonexistent. They say cause hasn't been proven.  
22 MR. ROSS: He can't give an opinion as  
to  
23 what other people -- he flat out says -- I mean, I  
24 remember from having read it, when asked what is  
he  
25 talking about, he says: Geez, it's been 10 years  
since

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20339

1 I read it.  
2 THE COURT: I was hoping for where he  
would  
3 say, on such and such an occasion.  
4 MR. ROSS: In general, that was our  
5 objection, because he never specifies any  
particular  
6 statements at any time. It's sort of a broad  
brush:

7 Well, I know they did this.  
8 MR. MOSS: The other point that  
9 Mr. Rosenblatt just made underscores it. He says:  
10 Anyone can tell from this.  
11 MR. ROSENBLATT: Not anyone, the jury.  
12 THE COURT: We're beyond that. I think  
we've  
13 established that fact through the other witnesses,  
that  
14 that's the position you're taking, blah, blah,  
blah,  
15 blah; that the party line is so and so.  
very  
16 But he makes very specific references to  
17 damaging statements: that they lied; that they  
18 committed subterfuge; that they tried to obstruct.  
And  
19 these things need to be backed up with fact. You  
just  
20 can't throw it out and say: Well, I remember some  
time  
21 ago they said something which was really terrible  
and  
22 it obstructed.  
23 That was my problem. Had he come in and  
24 said: Look, this is the document we were  
discussing.  
25 This is what we said. This is what we did.  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20340  
1 Where is their lie? Here is the  
statement  
2 which they pulled out. Well, this is the  
statement  
3 that they made on such and such an occasion,  
whereas  
4 the truth of the statement is over here.  
5 The implication is there, but it's by  
6 inference and innuendo, and that's where the  
problem  
7 comes in. I had a lot of problem with it. My  
8 inclination is to keep it out. I'll review it  
tonight  
9 just to double-check, but I'm really inclined not  
to  
10 allow it.  
11 MR. ROSS: Don't review it again on my  
12 account. I agree with your inclination.  
13 THE COURT: Yes, but you may be wrong.  
But  
14 it's serious enough that I'm going to have to look  
at  
15 it again and make sure. But that's my thought  
when I  
16 first read it. Sometimes first impressions are  
better.  
17 So that takes care of Holbrook.  
18 MR. MOSS: We're going to do Fulford?  
Are we  
19 doing Fulford today?  
20 THE COURT: Well, we don't have a jury.



21 MR. MOSS: I know we don't have a jury.  
I  
22 mean, are we going to go over Fulford?  
23 THE COURT: Didn't I do Fulford?  
24 MR. MOSS: No. That's the one you had.  
25 THE COURT: He wants to do it tomorrow  
TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED

20341  
1 morning.  
2 Stevens I'm looking at tonight.  
3 MR. ROSS: Is that color-coded, the one  
he  
4 gave you?  
5 THE COURT: Stevens? Yes.  
6 MR. ROSS: Now, if the color is wrong,  
you  
7 can blame him this time.  
8 THE COURT: I'm halfway through that  
one.  
9 MR. HEIM: So we'll do Fulford in the  
10 morning?  
11 THE COURT: We'll look at Fulford in the  
12 morning.  
13 MR. HEIM: 9:00?  
14 MR. ROSENBLATT: 9:00 is fine.  
15 THE COURT: Okay. 9:00 is fine.  
16 We did Orlowsky. Try to get to me, as  
early  
17 as you can, the other depositions that you need me  
to  
18 read, because I don't want to hold them just for  
the  
19 last day. Bad enough I've got to read them in the  
20 first place.  
21 All right, gentlemen, ladies.  
22 (Court was adjourned at 4:40 p.m.)  
23  
24  
25

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1998V-CALLHRIGHTSGRESERVED